Magistrate Judge Arnold

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTOINE JOHNSON, M.D., and LAWANDA JOHNSON,

Defendants.

CASE NO. MJ09-5027

COMPLAINT FOR VIOLATION

Title 18, U.S.C. Section 371

BEFORE, The Honorable J. Kelley Arnold, United States Magistrate Judge, U. S. Courthouse, Tacoma, Washington.

The undersigned complainant being duly sworn states:

COUNT ONE
(Conspiracy to Commit Health Care Fraud)

I. INTRODUCTION

1. At all times relevant to this Complaint, ANTOINE JOHNSON, M.D. (hereafter "DR. JOHNSON") was licensed as a physician and surgeon in the State of Washington. DR. JOHNSON was born in 1970 and is 38 years old.

2. DR. JOHNSON was a graduate of Meharry Medical College, School of Medicine, in Nashville, Tennessee. He is a contracted medical provider with the Medicaid program, the Medicare program and Washington State Department of Labor and Industries. As a contracted medical provider, DR. JOHNSON provided medical benefits and services to patients covered by these public health care plans or contracts.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

3. According to the Washington State Department of Health's Medical Quality Assurance Commission, DR. JOHNSON was designated as a Family Practice Medical Doctor (MD) in the State of Washington. DR. JOHNSON is a Drug Enforcement registrant, with DEA registration number BJ6587072. DEA registration authorizes practitioners to prescribe and dispense controlled substances, pursuant to applicable laws and regulations.

4. DR. JOHNSON operated four health care clinics in the state of Washington located in Aberdeen ("The Broadway Clinic"), Tacoma ("Johnson Family Practice"), Lakewood ("Johnson Family Practice"), and Olympia ("Johnson Family Practice").

5. LAWANDA JOHNSON is DR. JOHNSON's mother. From my review of records obtained during the course of the investigation and from information obtained from interviews of former employees of DR. JOHNSON, I have learned that LAWANDA JOHNSON worked for the Los Angeles, California school system as a teacher and then came to Aberdeen, Washington to assist her son, DR. JOHNSON, in the Aberdeen clinic. She is the office manager for the Aberdeen clinic, and according to information provided by former employees, LAWANDA JOHNSON does billing and runs day-to-day operations within the clinic. In addition, during one of the undercover operations, she was seen working at the clinic in Lakewood, Washington.

II. THE HEALTH CARE BENEFIT PROGRAMS

A. The Medicare Program

6. The Medicare program, as established by the Social Security Act, Title 42, United States Code, Section 301, et seq., provides medical insurance benefits for individuals typically aged 65 years or older and for certain disabled individuals. Medicare Part A ("Part A"), the Basic Plan of Hospital Insurance, covers the cost of inpatient hospital services and post-hospital nursing facility care. Medicare Part B ("Part B"), the Voluntary Supplemental Insurance Plan, covers the cost of physicians' services, including visits at doctors' offices, if the services are medically necessary and directly or personally provided by the physician.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

7. The Medicare program is administered by the Centers of Medicaid and Medicare Services ("CMS") through the Medicare Administrative Contractors, who are private insurance companies called "carriers" for Part B and "Fiscal Intermediaries" for Part A, who in turn process and pay individual Medicare claims. The Medicare Part B program is administered in Washington State by Noridian Administrative Services ("Noridian") which, pursuant to its contract with HHS, receives, adjudicates, and pays claims submitted by physicians and suppliers of medical services.

8. Medicare Part B reimburses 80 percent of the reasonable charges of most medically necessary services personally performed by a licensed medical doctor. Medicare Part B services performed by licensed doctors and other health care providers in Washington state are submitted for payment to Noridian on a "Health Insurance Claim Form" (known as a "HCFA 1500") or electronically. Both methods of filing Medicare Part B claims require the submission of certain information relating to the services provided, including patient information, the type of service, a modifier to further describe such service (if applicable), the date of such service, the charge for such services, diagnosis, a certification by the physician or provider as to the medical necessity of rendering such services, and the name and/or provider identification number of the performing provider.

B. The Medicaid Program

9. The Medicaid program was created in 1962 when Title XIX was added to the Social Security Act. Medicaid is a public assistance program covering medical expenses for low-income patients. Funding for Medicaid is shared between the federal government and those state governments that choose to participate in the program. In Washington, the Medicaid program is funded 50% with federal funds and 50% with state funds. At all times relevant to this affidavit, Medicaid rules at issue in this investigation were substantially similar in all material respects to those of the Medicare program.

10. In the State of Washington, the Medicaid program is administered by the Health and Recovery Services Administration ("HRSA"), which is a sub-agency of the

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

Department of Social and Health Services ("DSHS"). HRSA handles all aspects of the administration of the Medicaid program, including contracting health care providers, processing claims, making payments to providers, and conducting audits of providers.

C. Washington Department of Labor and Industries

11. Washington Department of Labor and Industries ("L&I") operates numerous programs under the Industrial Insurance Act, codified in the Revised Code of Washington ("RCW"), Title 51. Workers who experience on-the-job injuries receive health care benefits through L&I pursuant to the State Industrial Insurance (i.e., workers' compensation) program.

D. Billing Codes and Procedures

12. The Medicare and Medicaid programs, as well as virtually every other health care benefit program, require that claims for services report the type of service by use of the American Medical Association's Current Procedural Terminology ("CPT") Codes. CPT Codes are intended to accurately identify, simplify, and standardize billing for medical services. Related services are assigned sequential CPT Codes with differing levels of complexity. Among the most commonly billed codes are two series of five evaluation and management ("E&M") codes that apply to office or certain other outpatient visits. CPT Codes 99201, 99202, 99203, 99204, and 99205 are used for new patients, and 99211, 99212, 99213, 99214, and 99215 are used for established patients. As the code number becomes higher, the level of service and the reimbursement proportionally increase. The American Medical Association annually publishes a CPT Manual, which sets forth the criteria to be considered in selecting the proper codes to present the services rendered.

13. The CPT 2007 Manual listed the following five billing codes for office visits for established patients:

- Level One - 99211 is an office or other outpatient visit for the evaluation and management for an established patient, that may not require the presence of a

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

physician. Usually, the presenting problem(s) are minimal. Typically, 5 minutes are spent performing or supervising these services.

- Level Two - 99212 is an office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three components: a problem-focused history; a problem-focused examination; straight forward medical decision making. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are self-limited or minor. Physicians typically spend (10) minutes face-to-face with the patient and/or family.
- Level Three - 99213 is an office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three components: an expanded problem-focused history; an expanded problem-focused examination; medical decision making of low complexity. Counseling and coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of low to moderate severity. Physicians typically spend (15) minutes face-to-face with the patient and/or family.
- Level Four - 99214 is an office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three components: a detailed history; a detailed examination; medical decision making of moderate complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate to high severity. Physicians typically, spend twenty-five (25) minutes face-to-face with the patient and/or family.
- Level Five - 99215 is an office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

key components: a comprehensive history; a comprehensive examination; medical decision making of high complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problems are of moderate to high severity. Physicians typically spend forty (40) minutes face-to-face with the patient and/or family.

14. The five levels of codes for office visits for new patients, that is, CPT Codes 99201 through 99205, describe a similarly increasing level of complexity regarding patient history, examination and medical decision making.

- Level One - 99201 is an office or other outpatient visit for the evaluation and management of a new patient, which requires these three key components: a problem-focused history; a problem-focused examination; and straightforward medical decision making. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problems are self-limited or minor. Physicians typically spend 10 minutes face-to-face with the patient and/or family.
- Level Two - 99202 is an office or other outpatient visit for the evaluation and management of a new patient, which requires these three components: an expanded problem-focused history; an expanded problem-focused examination; and straightforward medical decision making. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of low to moderate severity. Physicians typically spend 20 minutes face-to-face with the patient and/or family.
- Level Three - 99203 is an office or other outpatient visit for the evaluation and management of a new patient, which requires these three components: a detailed history; a detailed examination; and medical decision making of low complexity.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problems are of moderate severity. Physicians typically spend 30 minutes face-to-face with the patient and/or family.

- Level Four - 99204 is an office or other outpatient visit for the evaluation and management of a new patient, which requires these three components: a comprehensive history; a comprehensive examination; and medical decision making of moderate complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate or high severity. Physicians typically spend 45 minutes face-to-face with the patient and/or family.
- Level Five - 99205 is an office or other outpatient visit for the evaluation and management of a new patient, which requires these three components: a comprehensive history; a comprehensive examination; and medical decision making of high complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate or high severity. Physicians typically spend 60 minutes face-to-face with the patient and/or family.

II. THE CONSPIRACY

15. Beginning at an exact time unknown and continuing until on or about January 14, 2009, in the Western District of Washington, the defendants, ANTOINE JOHNSON, M.D. and LAWANDA JOHNSON, did knowingly conspire to devise and execute a scheme and artifice to defraud health care benefit programs affecting commerce, and to obtain, by means of false and fraudulent pretenses, representations and promises, substantial sums of money and property owned by or under the custody or control of health care benefit programs affecting commerce, in connection with the

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

delivery of health care benefits, items or services, in violation of Title 18, United States Code, Section 1347.

A. The Manner and Means of the Conspiracy

16. Defendants ANTOINE JOHNSON, M.D. and LAWANDA JOHNSON used the following means, among others, to effect the objects and purposes of the conspiracy:

17. Defendants ANTOINE JOHNSON, M.D. and LAWANDA JOHNSON reported, and caused others to report, false and fraudulent information on claims to health care benefit programs by reporting a higher level of service than actually provided (that is, "upcoding" the service). Such false and fraudulent information included, but was not limited to, upcoding reported services as CPT code 99213 (expanded office visit) and 99214 (detailed office visit) in instances when in light of the duration of service, degree of difficulty of the problem or complexity of the medical service, the services should have been reported at a lower level of CPT code;

B. Overt Acts in Furtherance of the Conspiracy

18. In furtherance of the conspiracy, and to effect its objects, the defendants, ANTOINE JOHNSON, M.D., and LAWANDA JOHNSON, committed the following overt acts and caused the commission of such acts, among others:

19. On or about the dates identified below, the defendants ANTOINE JOHNSON, M.D. and LAWANDA JOHNSON caused false claims to be submitted to the Medicaid health care benefit program by reporting a higher level of service than actually provided. Such false and fraudulent information included, but was not limited to, the following:

///

///

///

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

Incident	Patient Name	Approx. Date and Location of Service	Health Care Program	Misrepresentations on Claim
1	Robert Larsen	1/15/08 Aberdeen, WA	Medicaid	Reported as CPT Code 99204 but should not have been coded at all.
2	Robert Larsen	3/4/08 Lakewood, WA	Medicaid	Reported as CPT Code 99214 but should have been CPT Code 99212
3	Robert Larsen	4/3/08 Lakewood, WA	Medicaid	Reported as CPT Code 99214 but should have been CPT Code 99211
4	Robert Larsen	5/15/08 Lakewood, WA	Medicaid	Reported as CPT Code 99213 but should not have been submitted for billing
5	Robert Larsen	5/22/08 Lakewood, WA	Medicaid	Reported as CPT Code 99213 but should not have been submitted for billing
6	Robert Larsen	6/26/08 Lakewood, WA	Medicaid	Reported as CPT Code 99214 but should have been CPT Code 99212

All in violation of Title 18, United States Code, Section 371.

And the complainant states that this Complaint is based on the following information:

I, Patrick Garry, being first duly sworn on oath, depose and say:

I. BACKGROUND

1. I have been employed for approximately three years as a Special Agent with the Federal Bureau of Investigation, and I am assigned to the Seattle Field Office.

2. As a special agent with the FBI, I am responsible for investigating violations of federal criminal laws, including violations of health care fraud statutes and other statutes, including those relating to unlawful drug distribution. These matters include the submission of false and fraudulent claims to Medicare, Medicaid and other health care benefit programs.

3. I have been participating in an investigation of ANTOINE JOHNSON, M.D. and LAWANDA JOHNSON. The focus of this investigation is two-fold: 1) the

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

submission of false and fraudulent claims for medical services by DR. JOHNSON and LAWANDA JOHNSON, who knew or should have known were not provided as billed; and 2) the unlawful prescribing of controlled substances (narcotics) by DR. JOHNSON without a legitimate medical purpose.

4. The investigation began as a result of several complaints regarding DR. JOHNSON. One complaint arose as a result of an audit of Medicaid claims performed by the Washington Department of Social and Health Services (DSHS), which found that DR. JOHNSON submitted claims at a higher level of service than performed (a practice known as upcoding), and for services not provided. The other complaint came from the Grays Harbor County Drug Task Force. That complaint alleged that DR. JOHNSON has written prescriptions for narcotics in return for cash payments, including on occasions when he does not see the patient.

II. Upcoding Resulting in Higher Payments

5. The allegations set forth in paragraphs 1 through 14, in Count One above, are re-alleged and re-incorporated herein.

6. Based on my training and experience investigating health care fraud matters, and my discussions with other agents, I know that the term "up-coding" generally describes the process by which a health care provider submits a claim for a higher level of service than was actually performed. Such a practice results in a health care provider receiving a higher payment than was due for the service actually performed. For example, in July of 2008, Washington's Medicaid program paid approximately $25.87 for a CPT code level 99212 office visit, while the Washington Medicaid program reimbursement rate for an CPT code level 99214 office visit in July of 2008 was $63.55.

III. Undercover Visits to DR. JOHNSON's Clinics

7. During the course of the investigation of DR. JOHNSON's practice, two federal agents separately visited various clinics of DR. JOHNSON's in an undercover capacity. Undercover Agent (UCA) UCA-1 presented himself as a Medicaid patient named "Robert Larsen" in several undercover operations occurring at two of the clinics --

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

the Aberdeen and Lakewood Clinics -- owned by DR. JOHNSON. The UCA-1 reported that during his visits to DR. JOHNSON's clinics, he did not always see DR. JOHNSON, sometimes seeing a nursing assistant and/or an ARNP. During all of the visits, the encounters with the providers were brief, and no one performed a physical examination. At each visit, UCA-1 received prescriptions for medication, including Tylenol #3, a Schedule III drug, and Ultram ER 200mg, a narcotic. DR. JOHNSON's clinics billed four of the office visits as Level 4 (i.e., one as CPT code 99204, and 3 as CPT code 99214) and 2 as a Level 3 (i.e., CPT 99213).

8. UCA-2 is a federal agent who presented himself as a Medicaid beneficiary on one occasion at the clinic owned by DR. JOHNSON in Olympia, Washington. UCA-2 was seen by a nursing assistant and a physician's assistant, and the visit did include a physical examination. The UCA-2 believes this claim was properly coded as a Level 4.

9. The descriptions of each of the visits set forth below are based on information provided to me by the undercover agents shortly after each of the visits described, and review of the video and audio tapes recorded during the visits. The billing information relating to each visit, is based on information I obtained by DSHS.

A. UCA-1 Visits to DR. JOHNSON's Clinics

10. UCA-1 visited DR. JOHNSON's clinic at 104 W. 4th Street, Suite 105, Aberdeen, Washington 98520 on one occasion, and DR. JOHNSON's clinic at 8509 Steilacoom Blvd.,SW, Suite B, Lakewood, WA 98498 on multiple occasions. On each of these visits, UCA-1 presented himself as Robert Larsen, his undercover identity.

UCA-1 visit on 1/15/2008 in Aberdeen, Washington

11. On January 15, 2008, UCA-1 signed in as a Medicaid beneficiary, "Robert Larsen," and gave the receptionist a Medicaid coupon. He filled out new patient forms that included questions about his medical history and insurance. He sat in the waiting area for about 1 hour and 45 minutes. During this time, UCA-1 observed five patients being taken back, one by one, by a nursing assistant, each reappearing after about five minutes. The nursing assistant then told them to wait a few minutes for their prescription.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

After a few minutes, the nursing assistant returned to the reception area and gave the patient a prescription.

12. After UCA-1 had been in the reception area for about 1 hour and 45 minutes, a female nursing assistant, Lisa (Last name unknown ("LNU"), took him to the exam area, weighed him, and took his blood pressure by use of a small device place around his wrist. Lisa LNU then took UCA-1 to an adjoining exam room, and closed the door. While he was waiting, UCA-1 heard a male voice (that he later identified as DR. JOHNSON) tell Lisa LNU to be careful about patients walking into the clinic and "bird-dogging," that he was "not going to go to jail over this," and that she should schedule these patients for Sunday rather than take them as walk-ins. Based on my experience and research, the term bird-dogging means to follow closely or monitor someone.

13. After UCA-1 waited in the exam room for about 25 minutes, DR. JOHNSON came in. UCA-1 and DR. JOHNSON sat together in front of the computer. DR. JOHNSON asked UCA-1 questions regarding his medical history and why he was there to see him. UCA-1 said he sometimes had sciatica pain, and occasional indigestion. He observed DR. JOHNSON write "sciatica" and "GERD" in the diagnosis field into the computer record. DR. JOHNSON noted that UCA-1's blood pressure was high, based on the blood pressure recording made by the nursing assistant of approximately 140/90, although DR. JOHNSON did not recheck his blood pressure. (UCA-1 has advised me that he does not have a history of high blood pressure and that his blood pressure is plus or minus 120/70 when recorded by his own health care providers.) DR. JOHNSON then proceeded to prescribe Ultram ER (a non-narcotic pain reliever), as well as Feldene (an anti-inflammatory drug), Nexium (for gastric reflux) and samples of blood pressure medications. The visit was approximately 16 minutes long. DR. JOHNSON did not conduct a physical exam.

14. DR. JOHNSON noted that UCA-1 had listed his address as being in Federal Way, and DR. JOHNSON noted that he did not have hospital privileges in King County.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

DR. JOHNSON said that his peers might think it was far-fetched if he had patients coming from Federal Way to Aberdeen. DR. JOHNSON suggested that if UCA-1 had an address in Pierce County, he could go to DR. JOHNSON's Lakewood or Tacoma Clinic.

15. I have learned that this visit was billed as CPT code 99204, at a cost of $235. I contacted the Medical Audit Unit of DSHS and advised them what occurred during this office visit. I was told that the service was billed at a higher level than was appropriate. The DSHS auditor concluded that no code was allowed for this visit, and it should not have been billed, because the visit did not have all three key components required for coding – a history, an exam, and decision making.

Second visit: 2/26/2008 in Lakewood, Washington

16. On February 26, 2008, UCA-1 visited DR. JOHNSON's clinic in Lakewood, Washington for a scheduled 7:30 p.m. appointment. However, because he did not have his Social Security number with him, he was told he could not be seen that day, and was rescheduled for another day. No claim was submitted for this date.

UCA-1 visit on 3/4/2008 in Lakewood, Washington

17. On March 4, 2008, UCA-1 arrived at the clinic in Lakewood, Washington, at about 6:20 p.m. for a scheduled 7:30 p.m. appointment. He observed a black female approximately 45 years old, another black female identified as Sam LNU, and a nursing assistant identified as Eloisa LNU, behind the counter. UCA-1 also observed approximately 25 other patients in the waiting area. UCA-1 signed in and presented his Medicaid coupon to Sam LNU. Eloisa LNU escorted him to an exam room and took his weight and blood pressure, noting that his blood pressure was normal. Eloisa LNU asked him to write his Social Security number in the medical record in his own handwriting. He wrote his undercover Social Security number in the medical record and returned to the waiting area.

18. UCA-1 waited for approximately 90 minutes before DR. JOHNSON arrived at the clinic. During that time, UCA-1 noticed an unidentified female patient walk into the clinic, and pay $75.00 cash. The patient then told the UCA-1 that during her last visit

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

at the clinic, there were approximately 51 patients in the waiting room. She said: "take 51 patients times $75.00 and now you know why DR. JOHNSON drives a Mercedes." During the wait, UCA-1 noticed that approximately 25 patients signed in. He observed that approximately 20 of them paid $75.00 cash, and 5 used what appeared to be a Medicaid coupon.

19. At approximately 8:25 p.m., Eloisa LNU called UCA-1's name and escorted him to an exam room. After waiting there for about 15 minutes, DR. JOHNSON entered the room. DR. JOHNSON entered information into the computer medical record, at one point commenting that the blood pressure medication seemed to be working, and that UCA-1 should continue taking it. In response to DR. JOHNSON's question regarding what brought him to the office, UCA-1 said that his sciatica was bothering him. UCA-1 said it would be easier to show DR. JOHNSON than to tell him, but DR. JOHNSON remained at the computer, and did not examine or look at UCA-1. DR. JOHNSON verbally stated "sciatica," "order X-Ray" and "Physical Therapy" and appeared to type that information into the computer. He also said "Tylenol 3 for pain" after UCA-1 said that medication had worked for him in the past.

20. DR. JOHNSON informed UCA-1 that he would receive more drug samples for his blood pressure, advised him to schedule an x-ray, blood work, and said that his prescription refill would be at the front desk. The visit with DR. JOHNSON lasted approximately 10 minutes, during which time DR. JOHNSON remained seated and typing. UCA-1 received the following prescriptions: Feldene (an anti-inflammatory drug), Nexium (for gastric reflux),Tyleonol #3 (a Schedule III drug), Colace (stool softener). He was also given samples of blood pressure medication at the front desk.

21. I have learned that this visit was billed as CPT code 99214, at a cost of $145. I contacted the Medical Audit Unit of DSHS and advised them what occurred during this office visit. I was told that the service was billed at a higher level than was appropriate; the proper code should have been 99212.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

UCA-1 visit on 4/03/2008 in Lakewood, Washington

22. On April 3, 2008, UCA-1 arrived at the Lakewood clinic at about 7:00 p.m. for a scheduled 7:45 p.m. appointment. Prior to entering the clinic, UCA-1 overheard an unknown male say "Hey did you get a script dog?" and another unknown male say "No, he is not here yet." The UCA-1 observed approximately 40 patients in the waiting room and approximately 50 to 60 people waiting outside of the clinic. The UCA-1 overheard a female talking on her cell phone, saying the following: "He's not there yet, he's running late. As soon as he gets here, I will get it and I'll call you and we'll hook up. I got a hold of my people." UCA-1 also overheard other patients refer to DR. JOHNSON as the "script doc," and several patients saying "just give me my scripts so I can go."

23. While waiting to be called to the exam room, UCA-1 observed patients being called back by a nursing assistant, and then reappearing in the lobby area in 2 to 3 minutes. Shortly after 8:05 p.m., UCA-1 heard patients say that DR. JOHNSON had arrived, and they were handing out scripts. Soon after that, a nursing assistant came into the reception area from the back, carrying an inch-high pile of papers that appeared to be prescriptions, and called out patient names. Over the next five minutes, most of the room had cleared out as patients took their prescriptions and left.

24. At about 8:25 p.m., UCA-1 was called back by a nurse practitioner identified as Amanda LNU, who took his blood pressure and weight, and escorted him to an exam room. Amanda LNU asked him if he was waiting to see DR. JOHNSON, or whether he just needed refills. UCA-1 said he did not need to see DR. JOHNSON, and did not need refills. Amanda LNU, while sitting at the computer, discussed his prior visit, medications, active problems and history. UCA-1 spent about 8 minutes with Amanda LNU. She then told him to go the reception area and wait to receive his samples for blood pressure medication and prescriptions for Feldene (an anti-inflammatory drug), Nexium (for gastric reflux), Tyleonol #3 (a Schedule III drug) and samples of blood pressure medication.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

25. I have learned that this visit was billed as CPT 99214, at a cost of $145. I contacted the Medical Audit Unit of DSHS and advised them what occurred during this office visit. I was told that the service was billed at a higher level than was appropriate; the visit should have been coded at CPT Code 99211.

Cancelled appointment 5/15/2008

26. One week prior to an appointment scheduled for 05/15/2008, UCA-1 called the clinic to re-schedule. The appointment change was granted to 05/22/2008. Although UCA-1 had no visit on 5/15/2008, DR. JOHNSON's office billed Medicaid for CPT Code 99213 for date of service 5/15/2008. I contacted the Medical Audit Unit of DSHS and advised them what occurred during this office visit. I was told that since there was no service provided, it should not have been billed at all.

UCA-1 visit on 5/22/2008 in Lakewood, Washington

27. On May 22, 2008, UCA-1 arrived at the clinic about 6:05 p.m. for a 6:15 p.m. appointment. UCA-1 observed about 10 patients in the waiting area, and about 10 patients waiting outside the clinic. He saw several patients pay $75.00 in cash at the counter, and receive a receipt. UCA-1 filled out a "half-slip," reporting that the reason for his visit was prescription refills. UCA-1 overheard another patient state that the reason for the visit was to obtain refills.

28. After a brief wait, a receptionist identified as Sedera LNU, called UCA-1 to the front desk. Sedera advised him that DR. JOHNSON was not at the clinic, and that he would have to come back the next day. UCA-1 told Sedera LNU that all he needed was prescription refills. She replied that was fine, and took his Medicaid coupon and copied it. After another 10-minute wait, UCA-1 was called back by a male assistant, who weighed him and took his blood pressure. This nursing assistant confirmed that he was there for prescription refills. The nursing assistant typed a few lines into the electronic medical record and told UCA-1 to stop by the front desk to pick up his prescriptions. The nursing assistant also told him he needed to submit to a random urinalysis test. UCA-1 complied. The entire encounter with the assistant lasted about 3 minutes. He was given

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

prescriptions for Feldene (an anti-inflammatory drug), Nexium (for gastric reflux), Tyleonol #3 (a Schedule III drug), Colace (stool softener). He was also given samples of blood pressure medication at the front desk.

29. I have learned that this visit was billed as CPT 99213, at a cost of $110. I contacted the Medical Audit Unit of DSHS and advised them what occurred during this office visit. I was told that the service was billed at a higher level than was appropriate; the visit should not have been coded at all, because the nursing assistant worked outside of the scope of his responsibilities.

UCA-1 visit on 6/26/2008 in Lakewood, Washington

30. On June 26, 2008, UCA-1 arrived at the Lakewood clinic at about 5:14 p.m. for a 5:45 p.m. scheduled appointment. He filled out a "half-slip" form indicating the reason for his visit was "prescription refill." While waiting, UCA-1 observed about 15 patients in the waiting area, and about another 15 patients standing outside the clinic. UCA-1 observed two patients give Sedera LNU cash and receive receipts.

31. After about 20 minutes, Sedera LNU called UCA-1 to the front desk, where she asked him for his Medicaid coupon, which she copied and returned. UCA-1 returned to the waiting area, where he overheard a conversation between three patients discussing another patient by the name of Amber LNU. They expressed concern that Amber LNU had been asking too many questions regarding what medications they were getting from DR. JOHNSON, what they had told DR. JOHNSON their issues were, and other questions relating to their relationship with DR. JOHNSON. The three patients discussed that they thought Amber LNU might be "Five-O." I know the term "Five-O" to be street slang for Law Enforcement.

32. At about 6:05 p.m., UCA-1 was escorted to an exam room by a nursing assistant. At about 6:15 p.m., DR. JOHNSON entered the exam room. DR. JOHNSON said he was filling out a template form and asked UCA-1 his date of birth. DR. JOHNSON took his blood pressure, temperature, and weight and entered information into the computer. DR. JOHNSON suggested that he would refer UCA-1 for blood work

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

to test for cholesterol levels and to rule out diabetes. DR. JOHNSON also suggested that UCA-1 would soon need a colonoscopy, noting that UCA-1 was approaching 40 years of age. UCA-1 was then instructed to pick up his samples and prescription refills at the front desk. The visit lasted about 8 minutes. DR. JOHNSON did not perform an examination. UCA-1 picked up prescriptions for Feldene (an anti-inflammatory drug), Nexium (for gastric reflux), Tyleonol #3 (a Schedule III drug) and Colace (stool softener) and samples of blood pressure medication.

33. I have learned that this visit was billed as CPT code 99214, at a cost of $145. I contacted the Medical Audit Unit of DSHS and advised them what occurred during this office visit. I was told that the service was billed at a higher level than was appropriate; the visit should have been coded at CPT Code 99212.

Seventh visit: 7/31/2008 in Lakewood, Washington

34. On July 31, 2008, UCA-1 arrived at the Lakewood clinic at approximately 5:30 p.m. The clinic was not yet opened. He observed about 15 patients waiting outside. When he entered the clinic, UCA-1 informed Sedera LNU that he had not received his Medicaid coupon in the mail and asked if he could pay cash. Sedera LNU consulted with LAWANDA JOHNSON, who UCA-1 knew to be DR. JOHNSON's mother. When LAWANDA JOHNSON asked his name, UCA-1 said it was Robert Larsen (his undercover name). LAWANDA JOHNSON looked that name up on the DSHS website, and asked UCA-1 for his date of birth and Social Security number. UCA-1 gave her his undercover date of birth and Social Security number. LAWANDA JOHNSON said that Robert Larsen was no longer active with Medicaid. UCA-1 asked to pay cash, and was advised that the price had recently gone up from $75 to $100. He paid $75, which is all he said he had on him, and they agreed he could owe the rest.

35. At about 7:35 p.m., nurse practitioner Amanda LNU took his weight, and escorted him to an exam room. UCA-1 confirmed that he was there for refills. Amanda LNU took his blood pressure. She asked him to confirm that his pain was still in the sciatica, and asked him to describe his pain over the past few months on a scale of 1-10.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

UCA-1 replied "5. " Amanda LNU gave him samples of blood pressure medication and prescriptions for Feldene (anti-inflammatory), Nexium (for gastric reflux), Tylenol #3 (a Schedule III drug), Colace (a stool softener) and blood pressure medication.

36. The following day I contacted an audit supervisor at DSHS to verify that UCA-1 under the name Robert Larsen was still listed in the DSHS database as an active Medicaid beneficiary. The audit supervisor confirmed that the UCA-1 identity "Robert Larsen" was still listed as an active Medicaid beneficiary. Washington Administrative Code (WAC) Section 388-502-0160 provides that a provider may not accept any form of payment directly from the beneficiary for a covered service, if that person is an active Medicaid beneficiary.

37. No claim was submitted to the Medicaid program for this date.

B. UCA-2's Visit to Olympia Clinic

38. Acting in an undercover capacity, UCA-2 visited the Johnson Family Practice, located in Olympia, Washington on April 23, 2008, pretending to be a Medicaid beneficiary. As the UCA-2 entered the clinic, he observed a paper sign on the receptionist's glass window that read "This Is a Non-Narcotic Clinic." UCA-2 was asked to fill out new patient forms.

39. In the exam room, UCA-2 was met by Garrett LNU, a nursing assistant. UCA-2 told Garrett LNU that he was new to the area, and was looking for a new doctor. He also said that he had back pain. Garrett LNU took a detailed medical history, took his blood pressure and weight, and recorded his height as recited by UCA-2. The nursing assistant also examined UCA-2's ears.

40. Next, UCA-2 met with William "Scotty" Millar, PA, a male in his early seventies, who informed UCA-2 that he was DR. JOHNSON's assistant. Millar said that he ran the clinic at that location. Millar performed an examination, listening to UCA-2's heart, lungs, neck and back; he examined his ears with an instrument; palpated his stomach area; and checked his hands and arms. UCA-2 had informed Millar of mild back

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

pain to which Millar stated that he would rather prescribe non-narcotics. Millar provided UCA-2 a prescription for a muscle relaxer with instructions.

41. UCA-2's visit on 04-23-2008 was billed as 99204. Another agent contacted the Medical Audit Unit of DSHS and advised them what occurred during this office visit. The agent was told that the service provided was billed appropriately.

IV. LAWANDA JOHNSON's Involvement in Upcoding

42. I have reviewed a statement provided to law enforcement officers from a prior employee of the Broadway Clinic. On January 16, 2009, a former employee of the Broadway Clinic in Aberdeen, Washington, walked in to the Grays Harbor Drug Task Force and asked to speak to a detective working on DR. JOHNSON's case. The employee stated that he/she came in because he/she was afraid of LAWANDA JOHNSON, who had threatened him/her. The employee reported that he/she began working on November 12, 2003, and has worked there ever since. The employee was responsible for the billing at the Broadway Clinic in Aberdeen.

43. The employee told officers that in 2004, he/she had mentioned to LAWANDA JOHNSON that the clinic was billing at a higher level than the service provided. LAWANDA JOHNSON responded to the effect that the employee should "just do it anyways, its fine, that's what I told you to do. . . ." The employee reported that he/she then went to DR. JOHNSON, and told the doctor, "I don't feel comfortable with this." The doctor then told his mother, who confronted the employee and told the employee ". . . if I ever come between her and her son again, she will come after my son and myself and I will live to regret it."

44. The employee stated that prior to obtaining a new billing system (the "VPN system"), LAWANDA JOHNSON told the employee "to code everything at 99213," or the medium level of service. The employee stated that LAWANDA JOHNSON told him/her that everyone was to be billed at this, "No matter what. Everybody was 99213. If they were a brand new patient, then 99204." "If they were a current patient, they were going to bill that every . . . single time." The employee continued to submit claims for

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

reimbursement to Medicaid and other health care programs, as demanded by LAWANDA JOHNSON, since that meeting in 2004, until the search warrants were executed in January 2009.

VI. DR. JOHNSON's Current Whereabouts

45. On Wednesday, January 14, 2009, search warrants were executed at DR. JOHNSON's four clinics (in Aberdeen, Olympia, Tacoma, and Lakewood), as well as at his mother's home in Aberdeen, Washington.[1] I have learned that after these search warrants were executed, DR. JOHNSON may have fled the area. On January 26, 2009, I met with a confidential informant, who advised me that he/she had been in contact with an employee of DR. JOHNSON's Lakewood clinic. This employee informed the confidential informant that DR. JOHNSON and LAWANDA JOHNSON had advised their employees that they were closing all their clinics. The employee was further advised to give all the clinics' computers as donations, and call various medical leasing companies to pick up the equipment they had provided to the clinics. Once these tasks were completed, the employee was travel to Blaine, Washington, where the employee was to pick up a Ford Expedition, which is owned by LAWANDA JOHNSON. This vehicle would be provided to the employee in exchange for his/her work closing down the clinics. None of DR. JOHNSON's employees have seen DR. JOHNSON since shortly after the searches. Several employees have tried to call DR. JOHNSON and his mother, and left messages, but neither of them has returned the calls. Recent checks mailed to employees are date-stamped Blaine, Washington, which is near the Canadian border. Finally, an employee advised another agent that LAWANDA JOHNSON had told her that if LAWANDA JOHNSON and DR. JOHNSON ever got into trouble, she would leave the country.

---

[1] The search warrants were issued by Magistrate Judge J. Kelley Arnold on January 9, 2009. The affidavit in support of these warrants is attached hereto and incorporated herein as further probable cause in support of this offense.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

VI. Conclusion

46. Based on the above facts, I respectfully submit that there is probable cause to believe that ANTOINE JOHNSON and LAWANDA JOHNSON did knowingly and intentionally commit the crime of conspiracy to commit health care fraud, in violation of Title 18, United States Code, Section 371.

Patrick Garry, Complainant
Special Agent, Federal Bureau of Investigation

Based on the Complaint and Affidavit sworn to before me, and subscribed in my presence, the Court hereby finds that there is probable cause to believe the Defendants committed the offense set forth in the Complaint.

Dated this 30 day of January, 2009.

J. KELLEY ARNOLD
United States Magistrate Judge

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

AFFIDAVIT

STATE OF WASHINGTON)

COUNTY OF PIERCE)

I, Raul Portillo, being duly sworn upon oath, depose and state:

I. BACKGROUND REGARDING AFFIANT

1. I have been employed for approximately two years as a Special Agent with the United States Department of Health and Human Services ("HHS"), Office of Inspector General, Office of Investigations ("HHS-OIG") and am assigned to the Seattle Field Office. Prior to my employment with HHS-OIG, I was employed by the Drug Enforcement Administration (DEA) as a Diversion Investigator, assigned to investigate violations of Title 21, United States Code, Section 846. In that capacity, I concentrated on drug investigations involving the unlawful diversion of controlled substances from pharmacies, hospitals, and other lawful suppliers.

2. As a special agent with HHS-OIG, I am responsible for investigating violations of federal criminal laws, including violations of health care fraud statutes and other statutes, including those relating to unlawful drug distribution, and tax fraud. These matters include the submission of false and fraudulent claims to Medicare, Medicaid and other health care benefit programs.

II. NATURE OF INVESTIGATION

3. I am currently participating in an ongoing investigation of Antoine D. Johnson, M.D. As described in this Affidavit, the focus of this investigation is three-fold: 1) the submission of false and fraudulent claims for medical services by Dr. Antoine Johnson who knew or should have known were not provided as billed; 2) the unlawful prescribing of controlled substances (narcotics) by Dr. Johnson without a legitimate medical purpose; and 3) the submission of false or fraudulent federal tax returns by Dr. Johnson.

4. The investigation began as a result of an audit of Medicaid claims performed by the Washington Department of Social and Health Services (DSHS), which found that Dr. Johnson submitted claims at a higher level of service than performed (a practice known as

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

upcoding), and for services not provided. After receipt of that complaint, I received a complaint from the Grays Harbor County Drug Task Force. That complaint alleged that Dr. Johnson has written prescriptions for narcotics in return for cash payments, including on occasions when he does not see the patient.

III. CRIMINAL OFFENSES AT ISSUE

5. Based on the evidence set forth in this Affidavit, I submit that probable cause exists to search the five locations specified below for fruits, evidence and instrumentalities of crimes, specifically, violations of various health care fraud, drug, and tax statutes including:

A. Health care fraud, in violation of 18 U.S.C. § 1347;

B. False statements relating to health care matters, in violation of 18 U.S.C. § 1035;

C. Unlawful distribution of a controlled substance, in violation of 18 U.S.C. §§ 841(a)(1) and 846; and

D. Tax fraud, in violation of 26 U.S.C. § 7201, 7206(1) and/or 7207.

IV. BACKGROUND REGARDING ANTOINE JOHNSON AND LAWANDA JOHNSON

6. Antoine Johnson, M.D. (hereafter "Dr. Johnson") is licensed as a physician and surgeon in the State of Washington. Dr. Johnson was born in 1970. He is a graduate of the Meharry Medical College, School of Medicine, in Nashville, Tennessee. He is a contracted medical provider with the Medicaid program, the Medicare program and Washington State Department of Labor and Industries. According to the Washington State Department of Health's Medical Quality Assurance Commission, Antoine Johnson is currently designated as a Family Practice Medical Doctor (MD) in the State of Washington. Dr. Johnson is a Drug Enforcement registrant, with DEA registration number BJ6587072. DEA registration authorizes practitioners to prescribe and dispense controlled substances, pursuant to applicable laws and regulations. According to the records of the Washington Secretary of State, Dr. Johnson is the president of Broadway Clinic, Inc. Broadway Clinic, Inc. has the registered trade names Johnson Family Practice and O C Ambulatory Care Clinic.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

7. Lawanda Johnson is Antoine Johnson's mother. From my review of records obtained during the course of the investigation and from information obtained from interviews of former employees of Dr. Johnson, I have learned that Lawanda Johnson worked for the Los Angeles, California school system as a teacher and then came to Aberdeen, Washington to assist her son, Dr. Antoine Johnson, in the Aberdeen clinic. She is the office manager for the Aberdeen clinic, and according to information provided by former employees, Lawanda Johnson does billing and runs day to day operations within the clinic. In addition, during one of the undercover operations, she was seen working at the clinic in Lakewood, Washington. According to the records of the Washington Secretary of State, Lawanda Johnson is the vice president of Broadway Clinic, Inc.

V. LOCATIONS TO BE SEARCHED

8. This affidavit is made in support of an application to search the four medical offices of Dr. Johnson for the items described in Attachment B-1 and the residence of Lawanda Johnson, for the items described in Attachment B-2. The specific locations I seek the authority to search are as follows:

Location 1:

The Broadway Clinic
104 W. 4th Street, Suites 105 and 104
Aberdeen, WA 98520

The clinic is located in a commercial complex named Broadway Medical-Dental Building, on the corner of 4th and Broadway. The clinic is in a single-story building that is constructed of tan siding with all wood shingles hanging around the trim. As you enter the business park, there is a detached sign that identifies the complex as the Broadway Medical Dental Building alongside a walkway that leads to the clinic. Walking from south to north, the door is the 4th door on the left with the name, Dr. Antoine Johnson, clearly printed in gold letters on the window. Also written on the door is 105 W. 4th Street. The next door on the left (north) has the name Lawanda Johnson, Office Manager, printed on the window in gold letters. The window is protected on the outside by black metal bars. The name Broadway Clinic is clearly visible on the main window between the two doors.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

Location 2:

Johnson Family Practice
8509 Steilacoom Blvd., Suite B
Lakewood, WA 98498

This clinic is located in a commercial business park on Steilacoom Blvd. The clinic is in a single-story building that is constructed of tan siding with brown trim and with a brown shingled roof. There is a parking lot in front of the building, and a business in the same building named North Harbor Physical Therapy. The entrance to the Johnson Family Practice Clinic has a large brown door with a large window to the left identifying the clinic as "Johnson Family Practice" in large red letters.

Location 3:

Johnson Family Practice
6604 Martin Way East
Olympia, WA 68516

This clinic is located in a commercial business park on Martin Way East. The clinic is in a two-story building with off-white siding and tan trim. There is a green awning in front of the building. The awning identifies the following businesses as occupants: Integrated Medical Examiners, LLC, Johnson Family Practice and William "Scotty" Millar, PA. There are two large glass doors at the entrance to the Johnson Family Practice. The hours of operation are on the two large glass doors in white letters and to the right of the two large glass doors on the siding are the large black numbers 6604.

Location 4:

Johnson Family Practice
1307 Martin Luther King Jr. Way
Tacoma, WA 98405

This clinic is located on the northeast corner of Martin Luther King Jr. Way and 13th Street. The clinic is in a two-story building and is constructed of white brick with an awning made of dark wood. In the center of the awning there is a large attached sign that has "Johnson Family Practice" in red letters. The same type of sign is located on each side of the building. As you enter the clinic there is a large wooden door with a large window on each side of the door. The

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

windows have in red letters "Johnson Family Practice." Johnson Family Practice appears to be the only occupant of the building.

Location 5:

Lawanda Johnson (Residence)
1252 N Broadway
Aberdeen, WA 98520

The location is a bi-level residence, brown with white trim. The structure has wood shingle siding and asphalt roofing. The residence is built into a hillside. The main door faces west towards Broadway Street. The numbers 1252 are clearly affixed to the left side of the door and are black in color. There are no obvious outbuildings visible from the roadway.

VI. BACKGROUND REGARDING HEALTH CARE BENEFIT PROGRAMS

A. The Medicare Program

9. The Medicare program, as established by the Social Security Act, Title 42, United States Code, Section 301, et seq., provides medical insurance benefits for individuals typically aged 65 years or older and for certain disabled individuals. Medicare Part A ("Part A"), the Basic Plan of Hospital Insurance, covers the cost of inpatient hospital services and post-hospital nursing facility care. Medicare Part B ("Part B"), the Voluntary Supplemental Insurance Plan, covers the cost of physicians' services, including visits to doctors' offices, if the services are medically necessary and directly or personally provided by the physician.

10. The Medicare program is administered by the Centers of Medicaid and Medicare Services ("CMS") through the Medicare Administrative Contractors, who are private insurance companies called "carriers" for Part B and "Fiscal Intermediaries" for Part A, who in turn process and pay individual Medicare claims. The Medicare Part B program is administered in Washington State by Noridian Administrative Services ("Noridian") which, pursuant to its contract with HHS, receives, adjudicates, and pays claims submitted by physicians and suppliers of medical services.

11. Medicare Part B reimburses 80 percent of the reasonable charges of most medically necessary services personally performed by a licensed medical doctor. Medicare Part B services performed by licensed doctors and other health care providers in Washington State are

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

submitted for payment to Noridian on a "Health Insurance Claim Form" (known as a "HCFA 1500") or electronically. Both methods of filing Medicare Part B claims require the submission of certain information relating to the services provided, including patient information, the type of service, a modifier to further describe such service (if applicable), the date of such service, the charge for such service, diagnosis, a certification by the physician or provider as to the medical necessity of rendering such service, and the name and/or provider identification number of the performing provider.

B. The Medicaid Program

12. The Medicaid program was created in 1962 when Title XIX was added to the Social Security Act. Medicaid is a public assistance program covering medical expenses for low-income patients. Funding for Medicaid is shared between the federal government and those state governments that choose to participate in the program. In Washington, the Medicaid program is funded 50% with federal funds and 50% with state funds. At all times relevant to this affidavit, Medicaid rules at issue in this investigation were substantially similar in all material respects to those of the Medicare program.

13. In the State of Washington, the Medicaid program is administered by the Health and Recovery Services Administration ("HRSA"), which is a sub-agency of the Department of Social and Health Services ("DSHS"). HRSA handles all aspects of the administration of the Medicaid program, including contracting health care providers, processing claims, making payments to providers, and conducting audits of providers.

C. Washington Department of Labor and Industries

14. Washington Department of Labor and Industries ("L&I") operates numerous programs under the Industrial Insurance Act, codified in the Revised Code of Washington ("RCW"), Title 51. Workers who experience on-the-job injuries receive health care benefits through L&I pursuant to the State Industrial Insurance (i.e., workers' compensation) program.

D. Other Health Care Benefit Programs

15. Dr. Johnson has been a provider for non-government sponsored health care benefit programs at various times in the past. This includes Regence BlueShield.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

VII. BILLING AND CODING REQUIREMENTS

A. Requirements of CPT Codes

16. The Medicare and Medicaid programs, as well as virtually every other health care benefit program, require that claims for services report the type of service by use of the American Medical Association's Current Procedural Terminology ("CPT") Codes. CPT Codes are intended to accurately identify, simplify, and standardize billing for medical services. Related services are assigned sequential CPT Codes with differing levels of complexity. Among the most commonly billed codes are two series of five evaluation and management ("E&M") codes that apply to office or certain other outpatient visits. CPT Codes 99201, 99202, 99203, 99204, and 99205 are used for new patients, and 99211, 99212, 99213, 99214, and 99215 are used for established patients. As the code number becomes higher, the level of service and the reimbursement proportionally increase. The American Medical Association annually publishes a CPT Manual, which sets forth the criteria to be considered in selecting the proper codes to present the services rendered.

17. I compared the CPT 2007 Manual against recent prior volumes and the Evaluation and Management codes and descriptions of those codes have not changed. The CPT 2007 Manual lists the following five billing codes for office visits for established patients:

- Level One - 99211 is an office or other outpatient visit for the evaluation and management for an established patient, that may not require the presence of a physician. Usually, the presenting problem(s) are minimal. Typically, five minutes are spent performing or supervising these services.
- Level Two - 99212 is an office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three components: a problem focused history; a problem focused examination; straight forward medical decision making. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are self-limited or minor. Physicians typically spend ten minutes face-to-face with the patient and/or family.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

- Level Three - 99213 is an office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three components: an expanded problem focused history; an expanded problem focused examination; medical decision making of low complexity. Counseling and coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are low to moderate severity. Physicians typically spend fifteen minutes face-to-face with the patient and/or family.
- Level Four - 99214 is an office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three components: a detailed history; a detailed examination; medical decision making of moderate complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate to high severity. Physicians typically spend twenty-five minutes face-to-face with the patient and/or family.
- Level Five - 99215 is an office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three key components: a comprehensive history; a comprehensive examination; medical decision making of high complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problems are of moderate to high severity. Physicians typically spend forty minutes face-to-face with the patient and/or family.

18. The five levels of codes for office visits for new patients, that is, CPT Codes 99201 through 99205, describe a similarly increasing level of complexity regarding patient history, examination and medical decision making.

- Level One - 99201 is an office or other outpatient visit for the evaluation and management of a new patient, which requires these three key components: a problem

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

focused history; a problem focused examination; and straightforward medical decision making. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problems are self-limited or minor. Physicians typically spend ten minutes face-to-face with the patient and/or family.

- Level Two - 99202 is an office or other outpatient visit for the evaluation and management of a new patient, which requires these three components: an expanded problem focused history; an expanded problem focused examination; and straightforward medical decision making. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of low to moderate severity. Physicians typically spend twenty minutes face-to-face with the patient and/or family.
- Level Three - 99203 is an office or other outpatient visit for the evaluation and management of a new patient, which requires these three components: a detailed history; a detailed examination; and medical decision making of low complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problems are of moderate severity. Physicians typically spend thirty minutes face-to-face with the patient and/or family.
- Level Four - 99204 is an office or other outpatient visit for the evaluation and management of a new patient, which requires these three components: a comprehensive history; a comprehensive examination; and medical decision making of moderate complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate or high severity. Physicians typically spend forty-five minutes face-to-face with the patient and/or family.
- Level Five - 99205 is an office or other outpatient visit for the evaluation and management of a new patient, which requires these three components: a comprehensive

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

history; a comprehensive examination; and medical decision making of high complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate or high severity. Physicians typically spend sixty minutes face-to-face with the patient and/or family.

B. Upcoding Results in Higher Payments

19. Based on my training and experience investigating health care fraud matters, and my discussions with other agents, I know that the term "up-coding" generally describes the process by which a health care provider submits a claim for a higher level of service than was actually performed. Such a practice results in a health care provider receiving a higher payment than was due for the service actually performed. For example, in July of 2008, Washington's Medicaid program paid approximately $25.87 for a CPT code level 99212 office visit, while the Washington Medicaid program reimbursement rate for a CPT code level 99214 office visit in July of 2008 was $63.55.

VIII. BACKGROUND REGARDING NARCOTICS VIOLATIONS

20. As a special agent with the Drug Enforcement Agency ("DEA"), I spent more than two years investigating drug crimes involving DEA registrants. Based upon the training and experience I received as a DEA agent, as well as my research of Title 21 of the United States Code and discussions with other federal agents, I have come to know that it is unlawful for anyone, including a physician, to prescribe a controlled substance without a legitimate medical purpose. I have further come to know that a "legitimate medical purpose" means that a controlled substance is prescribed for a specific medical condition or diagnosis, which the physician has established by performing an examination of the patient, by conducting neurological or other tests, or both.

21. The DEA classifies drugs or "controlled substances" according to a schedule. All of the drugs referred to in this Affidavit fall under these schedules, as more fully described below:

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

Schedule I: These substances have no accepted medical use in the United States and have a high abuse potential. One example is heroin. These drugs may not be prescribed by a medical doctor.

Schedule II: These substances have a high potential for abuse with psychic or physical dependence. Schedule II controlled substances consist of certain narcotic, stimulant, and depressant drugs. Prescriptions must be handwritten or typewritten and signed by the practitioner except in a genuine emergency, in which case written confirmation within 72 hours is required. The refilling of a prescription for a controlled substance listed in Schedule II is prohibited by 21 U.S.C. 829(a). Examples of Schedule II substances include OxyContin, Methadone, and Morphine.

Schedule III: These substances have an abuse potential less than those in Schedules I and II, and include compounds containing limited quantities of certain narcotic and non-narcotic drugs. Prescriptions may be written, or may be called in to a pharmacy and promptly reduced to writing thereafter. Up to five refills are permitted within six months without the patient seeing the physician, provided that the patient was seen at least once by the treating physician during the period of the prescriptions. Examples of Schedule III substances include Vicodin and Tylenol #3.

Schedule IV: These substances have a low potential for abuse relative to the drugs or other substances in Schedules II and III. Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence. Examples include Xanax, Valium and Halcion.

IX. AUDITS OF DR. JOHNSON'S BILLING

A. Audit by Regence BlueShield

22. Regence BlueShield's Investigations Department conducted an audit of Dr. Johnson's patient records and billings for four patients who were treated from October 2004 through February 2006. The audit findings included the following:

- Up-coding: including billing for E&M services when only massage therapy was documented; billing for a new patient visit for an established patient; and billing a

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

higher level of service than was provided (including billing for a visit for a prescription refill at level 99214 when the documented chart note supported only a level 99212).

- Billing for services of non-credentialed providers (including a Physician's Assistant under Dr. Johnson's tax identification number).
- Some visits appeared to be for prescription refills only and there was no record of examination of the patient, or treatment other than writing the prescription.
- Chart notes appeared to be the same from visit to visit.
- There was no documentation for some of the services billed.
- Chart notes submitted to Regence during the audit process were altered from the original chart notes for the specific visits.

23. Dr. Johnson disputed the findings but Regence rejected his appeals and asked him to reimburse Regence BlueShield the sum of $2,762.49. Dr. Johnson paid this amount by check signed by Lawanda Johnson. The check included the handwritten notation "paid under duress" in the memo section. Dr. Johnson terminated his participation as a Regence BlueShield provider on February 07, 2007.

24. Following the audit, Regence BlueShield filed a complaint with the Department of Health suggesting that, due to the egregiousness of their findings as well as many member and internal complaints, the Department of Health investigate Dr. Johnson for possible licensure sanctions. The complaints cited by Regence included that Dr. Johnson was billing for moderate and complex office visits when the patients did not see Dr. Johnson, but only saw a nurse or a certified nursing assistant.

B. Audit by Washington L&I

25. Washington State L&I conducted an audit of Dr. Johnson for the time period of February 1, 2004 through January 30, 2006 after receiving a complaint from a former employee of Dr. Johnson. A memo prepared in May 2006 summarized the audit findings, which included the following:

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

- There were no chart notes for some billed services.
- Some chart notes lacked signatures, so the provider of service could not be identified.
- Variations of signatures in chart notes - including stamped signature for Dr. Johnson and signature variations.
- Some chart notes referred to Dr. Johnson in the third person, giving the impression that the author of the note was not Dr. Johnson.
- At the beginning of the audit process, the L&I auditors requested chart notes for particular dates of service for particular patients. L&I received some chart notes for the dates of service and patients requested. However, some requested chart notes were not provided. The auditors then requested the complete charts, including notes for all dates of service for the patients that were the subject of the initial request for limited chart notes. Upon reviewing the complete charts, L&I auditors discovered that some of the chart notes for specific dates of service subject to the first request had been changed.
- Services performed by Physicians' Assistants (PAs) or Nurse Practitioners (ARNPs) were billed under Dr. Johnson's provider number resulting in overpayments.
- Some chart notes were exactly the same as chart notes for previous dates of service.
- Services were up-coded.
- Services were double billed (i.e., office visits were sometimes billed twice for the same date of service).
- CPT office visit code level 99214, which required face-to-face time, was sometimes billed when the record reflected only phone contact with the patient. CPT codes 99371, 99372 and 99373 are the correct ones to be used for telephone calls.
- Claims for some established patients were submitted as claims for new patients.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

C. Audit Performed by the Western Integrity Center (WIC)

26. The Western Integrity Center ("WIC") is a program safety contractor of the Centers for Medicare and Medicaid Services. The WIC's primary responsibility is to identify and refer potential fraudulent activities regarding the Medicare Program to HHS-OIG. The WIC also provides investigative support by providing medical billing data regarding a provider to HHS-OIG.

27. The WIC performed an audit covering the time period December 1, 2004 through November 30, 2007. The audit involved a statistically valid random sample (SVRS) reviewing procedure codes 99204, 99214 and 99213. This audit found a 25% error rate, primarily related to upcoding of claims to a higher level of service than was supported by the medical documentation. The audit summary noted that medical records appeared to be in "cookie cutter" fashion, with documentation changing only as to subjective documentation and vital signs. The findings included that 31 of the 37 patients reviewed were on an opioid derivative, and that numerous patients were on more than one opioid. The summary noted that 32 of 37 patients were seen on average once per month.

28. The requested overpayment amount was $68,375.00, a figure which resulted after the audit results were extrapolated over the larger universe of claims from which the sample was drawn. Dr. Johnson paid this amount in full.

D. Audits Performed by DSHS on Behalf of the Medicaid Program

29. The Department of Social and Health Services ("DSHS"), Health Recovery Services Administration ("HRSA"), Office of Payment Review and Audit, performed an audit of Dr. Johnson's practice, based on (1) a sample of 291 claims that had been paid from October 1, 2003 through September 30, 2006, and (2) a claim by claim audit of the 25 highest reimbursed procedures. DSHS concluded by the audit that DSHS had overpaid Dr. Johnson $116,626.46, and demanded repayment of that sum, plus interest. Dr. Johnson contested the audit findings, and the matter proceeded to an administrative hearing. The Initial Order resulting from that hearing was issued on August 26, 2008. The Initial Order included the following findings relating to the claims audited:

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

- Improper Evaluation and Management Billings: Many examples are cited. They include numerous examples of billing a Level 4 visit when the documentation supported only a Level 1, 2 or 3 visit.
- Billing Using Wrong Codes: Many examples are cited. Many relate to billing code J7599 (injection, Immunosuppressive Drug) when the documentation supported a different code that would have resulted in a substantially lower reimbursement rate. Examples include billing $537.80 under J7599 when it should have been billed as J1885 (Tordol injection), for which payment would be $2.20; billing $725.00 for code J7599, when the documentation supported code J3420 (Vitamin B-12 injection) for which payment was $.31.
- Records Lacked Documentation of Services Billed: Many examples are cited. Many relate to billing code J7599 (injection, Immunosuppressive Drug) when there was no documentation to support the claim. These include instances where the provider billed $580.00, $290.00, $675.00, $405.00 and similar amounts in the hundreds of dollars per claim. Other examples included billing for an office visit, hospital visit, or nursing home visit when there was no documentation that the service had been provided.

30. The Initial Order makes reference to Dr. Johnson's claim that the audit and the alleged overpayment was the result of unlawful racial animus. The Administrative Law Judge stated that she rejected that allegation because "there is no evidence to support it." Dr. Johnson filed an appeal from this Initial Order with DSHS Board of Appeals on September 15, 2008. As of this writing, the appeal was still pending.

X. INFORMATION FROM FORMER EMPLOYEES OF DR. JOHNSON

31. During the course of the investigation, I and other agents have interviewed four former employees of Dr. Johnson. They will be referred to as Employees 1- 4.

A. Employee 1

32. Employee 1 worked at the Aberdeen clinic from the fall of 2004 until early 2007. He/she did clerical work and some billing. Employee 1 said that services were being billed for

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

patients supposedly seen by Dr. Johnson, but there was no documentation in the patient's chart regarding the service. Employee 1 said that he/she seldom saw Dr. Johnson in the office. In contrast, Employee 1 noted that there was documentation in the patients' charts if they were seen by the Physician's Assistant and the Nurse Practitioner.

33. Employee 1 said that there were 40 to 50 patients scheduled per day, and often there was no space in the waiting room, so patients waited in the parking lot. Some patients who had morning appointments would not be seen until late afternoon. Employee 1 heard rumors that some of the patients who paid cash were receiving narcotic prescriptions and then selling them in the parking lot.

B. Employee 2

34. Employee 2, an Advanced Registered Nurse Practitioner ("ARNP"), was employed at the Aberdeen clinic for about six months in 2006. Employee 2 said that 30 to 40 patients visited the clinic on a typical day. Patients seen by other health care providers in the clinic saw the provider for about ten minutes. The nursing assistants would bring Employee 2 refill drug prescriptions to sign. Employee 2 would not do so until Employee 2 reviewed the patient's chart.

35. Employee 2 said he/she left the clinic because the clinic did not provide care to patients; rather, patients came to the clinic to get prescriptions for narcotics. One patient told Employee 2 that Dr. Johnson's clinic is known as a "drug mill" and "pill farm" in the community. Patients routinely complained of back pain, which is a symptom Employee 2 knows to be used frequently by drug seekers. The narcotics that patients requested include OxyContin, OcyCodone, Vicodin and Soma. Employee 2 said that the combination of Vicodin and Soma is known as the "poor man's heroin." Most of the patients that Employee 2 saw had physical and mental signs associated with persons abusing narcotics. On occasion, pharmacies telephoned to advise that a patient had multiple prescriptions for narcotics. Employee 2 believed that some patients went to more than one of Dr. Johnson's clinics on the same day or near that date to get refill prescriptions for narcotics.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

C. Employee 3

36. Employee 3, a Physician's Assistant, was employed at Dr. Johnson's Aberdeen clinic from 2003 to late summer, 2006. At first, Employee 3 worked with Dr. Johnson almost every day. Later, Employee 3 worked in the morning and afternoon, and Dr. Johnson worked in afternoon and evening. After Dr. Johnson opened clinics in Lakewood and Tacoma, Dr. Johnson would come to the Aberdeen office only one or two days per week.

37. Employee 3 said that he/she saw an average of 40 patients per day, and that 15 - 29% would be there for a prescription refill only. Employee 3 said they treated more chronic pain patients than usual because many of the doctors in the area would not treat them. Some patients were on drug contracts and were monitored more closely. For example, they were required to take random urine analyses ("UA"), and were discharged if they had a dirty UA.

38. Employee 3 said that refill appointments took about five minutes and consisted of reviewing the chart with the patient and writing out new prescription(s). Prescriptions were renewed every two weeks.

D. Employee 4

39. Employee 4 was employed at Dr. Johnson's clinic in Aberdeen for approximately six months. Employee 4 received his/her Certified Nursing Assistant (CNA) certificate from Grays Harbor College and is certified by the State of Washington. Employee 4's job duties included: taking patients to exam rooms, filling out paperwork to order lab work, and giving patients prescriptions signed by Dr. Johnson, the ARNP or the Physician's Assistant.

40. Employee 4 said that Dr. Johnson did not document patient visits. When Dr. Johnson's patients were seen by another provider at the clinic, that provider would have no idea why the patients were receiving the prescribed medications, or what they were being treated for. Charts did not have X-rays, lab work or documentation of actual patient treatment.

41. Employee 4 said that if a bill would not go through it would be changed in order to get approval. For example, sometimes white out was used to change dates and then the chart note was photocopied and resubmitted. Based on information Employee 4 received from persons

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

who did office and billing work for Dr. Johnson, Employee 4 suspected that Lawanda Johnson was up-coding the billing.

42. Employee 4 stated that he/she overheard patients in the waiting room asking each other what drugs they were getting, and discussing possible trades of drugs between them. Employee 4 said that Dr. Johnson was known as the "Candy Man" in Aberdeen. Employee 4 said that it was typical that 40 patients were at the clinic on any given day.

43. Employee 4 stated that patients did not like to see the ARNP, because the ARNP would try to get them off of narcotics. Employee 4 said that many of these patients left the clinic after seeing the ARNP, and they would schedule another appointment within a week to seek Dr. Johnson or the Physician's Assistant.

44. Employee 4 said that Dr. Johnson did have drug contracts with some patients, but that it was mostly for appearance. I have learned that a drug contract typically consists of a signed agreement between a doctor and patient which sets forth conditions under which a patient will be prescribed opioid pain medications for the treatment of chronic pain.

XI. INFORMATION FROM PATIENTS AND FAMILY MEMBERS OF PATIENTS

45. During the course of our investigation, I and other agents working with me have interviewed several persons who have been patients of Dr. Johnson. They will be referred to in this Affidavit as CW-1, CW-2 and CW-3. We also interviewed the spouse of a recently deceased former patient of Dr. Johnson. He/she will be referred to as CW-11. These witnesses explained that Dr. Johnson did not perform examinations or tests which would have allowed him to established a "legitimate medical purpose" for the prescribing of controlled substances. As discussed more fully below, the patients went to Dr. Johnson to satisfy their addiction to controlled substances.

A. Former Patient CW-1

46. Cooperating Witness-1 (CW-1) is a resident in Aberdeen, WA, a Medicaid beneficiary and a former patient of Dr. Johnson. CW-1 first saw Dr. Johnson 7 to 8 years ago at the Rogers Saux Health Clinic, and later continued to see him in Aberdeen when he established a

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

clinic there. According to CW-1, Dr. Johnson was known in the community as the "Candy Man."

47. CW-1 stated that he/she would visit Dr. Johnson's office to obtain prescriptions for pain medication. CW-1 stated that when he/she visited Dr. Johnson's Aberdeen clinic, the waiting area was always full. CW-1 would have to wait two to four hours before he/she was seen.

48. CW-1 did not see Dr. Johnson at all during most of his/her visits to the Aberdeen Clinic. The visits usually consisted only of having his/her vitals (weight, temperature and blood pressure) taken by a nurse or nursing assistant, after which CW-1 was given a prescription for pain medication. On those occasions when CW-1 did see Dr. Johnson, he did not examine CW-1 or talk to CW-1 about his/her health problems. Rather, Dr. Johnson would stay near the computer making idle conversation. CW-1 felt it was necessary to see another doctor at the Rogers Saux Health Clinic because CW-1 needed his/her health problems addressed. However, CW-1 also continued to see Dr. Johnson in order to obtain prescriptions for pain medication. CW-1 paid $75.00 in cash for the visits to Dr. Johnson's office to obtain pain medication, specifically for MS Contin (a Schedule II narcotic drug) and Vicodin (a Schedule III narcotic drug), and several non-narcotic medications. At one point, CW-1 was advised by the Medicaid program that, in addition to collecting $75.00 in cash from CW-1, Dr. Johnson's office had also billed Medicaid using CW-1's Medicaid coupon. CW-1 stated that his/her significant other was also seeing Dr. Johnson and paying $75.00 in cash, also to obtain prescriptions for pain medications.

49. I have reviewed DSHS records dating from 2004 to 2007 relating to claims submitted by Dr. Johnson with respect to CW-1. During this period of time, Dr. Johnson submitted 70 claims for office visits for CW-1, 41 of which were at the level of service CPT Code 99214.

B. Former Patient and Employee CW-2

50. Cooperating Witness-2 (CW-2) is a resident in Aberdeen, WA, a Medicaid beneficiary and a former patient of Dr. Johnson. For a period of approximately four months,

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

CW-2 worked in Dr. Johnson's Aberdeen Clinic. CW-2 first saw Dr. Johnson in 1999, as a result of pain following shoulder surgery. CW-2 stated that Dr. Johnson prescribed pain medication freely. CW-2's intention was to get medication for a month for post-surgical pain, but instead continued to get pain medication from Dr. Johnson for approximately 4 years. According to CW-2, Dr. Johnson wrote him/her prescriptions for 20 mg OxyContin, and later switched CW-2 to 30 mg Morphine. CW-2 later went into treatment for her addiction to pain medication.

51. CW-2 said that he/she did not see Dr. Johnson or a Physician's Assistant for visits. Instead, CW-2 saw a "triage" girl who printed out a prescription, gave it to Dr. Johnson for his signature, and then gave CW-2 the prescription. CW-2 said that Dr. Johnson never checked his/her injury, never asked questions about it, and never examined him/her. I reviewed the DSHS billing records for claims submitted by Dr. Johnson with respect to CW-2. Those records show that Dr. Johnson billed for 16 office visits, 11 of which were at the level of service CPT Code 99214.

52. CW-2 said that his/her child saw Dr. Johnson following surgery, when the child was 17 years old. According to CW-2, the child was never physically examined by Dr. Johnson, but he prescribed her narcotics. The DSHS billing records show that Dr. Johnson submitted 10 claims for office visits with respect to the child: 4 were billed as CPT Code 99214, and 5 were billed as CPT Code 99213.

53. CW-2 described the environment in the Aberdeen Clinic as one where people came to get narcotic drugs for no legitimate medical purpose. CW-2 stated that the majority of the patients were not old ladies in pain but 19-year-old guys who were obvious addicts. CW-2 overheard patients speaking to each other about the type of medication they were going to get and making arrangements to meet at the nearby pharmacy and exchange their pain medication. CW-2 also knew of this behavior because of his/her personal involvement with some of the patients. CW-2 said it was easy to get narcotics from Dr. Johnson, and was concerned that someday someone would end up dying.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

C. **Patient CW-3**

54. CW-3 is a resident of Tacoma, WA, a Medicaid beneficiary, and a current patient of Dr. Johnson. CW-3 heard about Dr. Johnson from a relative who had been receiving narcotics from his clinic. CW-3 stated that the word on the street is that Dr. Johnson "is a writer." CW-3 went to Dr. Johnson for the specific purpose of getting pain medication, and CW-3 has been seeing him for that purpose for about one year. According to CW-3, Dr. Johnson wrote CW-3 prescriptions for 40, 60 and 90 mg OxyContin.

55. CW-3 reported that several people in Dr. Johnson's waiting room have approached him/her wishing to buy the prescription CW-3 received from Dr. Johnson. According to CW-3, most of the people that see Dr. Johnson at the Lakewood clinic are drug addicts and most of the people that go to the Tacoma clinic are "cracked out." CW-3 recalled one instance where he/she was waiting in the waiting room and a gentleman who was sitting behind CW-3 was cleaning his crack pipe. CW-3 informed the receptionist and the gentleman was asked to leave. A few minutes later that same gentleman came back into the clinic and received his prescription. CW-3 also recalled a second instance, when the woman behind CW-3 in line at the reception desk seemed all doped up; the receptionist took the woman's cash anyway and checked her in.

D. **CW-11: Spouse of a Recently Deceased Patient**

56. CW-11 is a resident of Aberdeen, WA. CW-11's spouse, who was a patient of Dr. Johnson, died in early November, 2008. CW-11 said that his/her spouse was a diabetic and had neuropathy. CW-11did not believe the spouse needed pain medication for any other reason than to feed the spouse's addiction.

57. CW-11 stated that he/she sometimes accompanied the spouse to Dr. Johnson's clinic when the spouse needed a refill for prescription medication. Sometimes the spouse would call ahead, and simply walk in and pick up the prescriptions at the desk, without seeing any provider. There were times when CW-11 would drop off the spouse at the clinic and there would be wall to wall people waiting for their prescriptions.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

58. CW-11 recalls that at any one time CW-11's spouse was on 12 to 14 different medications which were prescribed by Dr. Johnson. CW-11 and the spouse had a number of conversations regarding the spouse's addiction. The spouse told CW-11 that Dr. Johnson was working on weaning him/her off the OxyContin. CW-11 said it was difficult to have a conversation with the spouse because the spouse acted like a heroin addict.

59. CW-11 recalled one visit with Dr. Johnson when he/she was with the spouse in the examination room. Dr. Johnson engaged in a conversation regarding how dental patients in the State of Washington were being under prescribed for pain medication. The visit lasted about ten minutes. Dr. Johnson did not examine the spouse.

60. After the death of CW-11's spouse in early November, 2008, CW-11 contacted Dr. Johnson. CW-11 told Dr. Johnson that the spouse had gone to see Dr. Johnson three days before the spouse's death, and received a bag full of prescription medication. CW-11 asked Dr. Johnson what he had prescribed, but Dr. Johnson would not tell CW-11, citing HIPAA privacy concerns. CW-11 asked Dr. Johnson why he had prescribed a combination of Amitriptyline and Tramadol, given that drug users combine those drugs to get high. Dr. Johnson explained that he was surprised that patients combined those drugs to experience some type of euphoria. Dr. Johnson told CW-11 that Tramadol was non-narcotic and not addictive and that Amitriptyline was a mood-altering drug that relieves neuropathy. I consulted a nurse from DSHS who advised me that the medical literature confirms that caution should be used in prescribing both Amitriptyline and Tramadol because of the risk of adverse interactions when both drugs are taken together.

61. After the spouse's death, CW-11 received a call from a friend whose spouse is a patient of Dr. Johnson. The friend stated that his/her spouse was being treated with pain medication for diabetes and that he/she was concerned for the spouse's well being.

62. CW-11 believes that his/her spouse's death was totally preventable and that Dr. Johnson knew of the spouse's addiction yet continued to supply the spouse with prescriptions. CW-11 stated that the community has enough problems without someone freely giving out prescriptions.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

63. CW-11 called me in late December 2008 to advise that he/she had been advised of the results of her spouse's autopsy. CW-11 said he/she was told that the Gray's Harbor County Medical Examiner concluded that CW-11's spouse died of an accidental overdose of OxyContin (a Schedule II narcotic drug) and Tramadol, a non-schedule drug.

64. I have reviewed the DSHS billing records for claims submitted by Dr. Johnson for CW-11's spouse from 2006 through 2008. During this period of time, Dr. Johnson submitted 36 claims for office visits. Fourteen were submitted at level 4 (CPT Code 99214), and twenty were submitted at level 3 (CPT Code 99213). In addition, the records show that on average, CW-11's spouse received five prescriptions per visit, including both Amitriptyline and Tramadol.

XII. INFORMATION FROM FORMER PHYSICIAN COLLEAGUES OF DR. JOHNSON

65. During the course of this investigation, I and other agents working with me interviewed six physicians who practice in Grays Harbor County, Washington. They will be referred to here as CW-5, CW-6, CW-7, CW-8, CW-9 and CW-10. They all know Dr. Johnson from his practice in Aberdeen, Washington, which is in Grays Harbor County. In many cases, they saw patients who had also seen Dr. Johnson. Dr. Johnson has been involved in a legal dispute with the Gray's Harbor County Hospital where these physicians practice. I have reviewed records relating to that dispute and have discussed it with some of the physicians at Gray's Harbor County Hospital who were knowledgeable about the litigation, which is briefly summarized below.

A. Litigation Regarding Dr. Johnson's visiting privileges at Gray's Harbor Community Hospital

66. In November 2002, Dr. Johnson was granted an appointment to the Gray's Harbor Community Hospital (GHCH) medical staff, which included visiting privileges at the hospital. In September 2004, Dr. Johnson's privileges were suspended for his repeated violations of hospital policy. In November 2004, Dr. Johnson allowed his privileges to lapse, and he did not return an application to renew the privileges. In 2006, Dr. Johnson sought to renew his privileges.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

67. In March 2006, GHCH denied Dr. Johnson's renewed application for privileges, citing licensing issues and an unacceptable professional reference. As a result, on August 31, 2006, Dr. Johnson filed a pro se lawsuit in United States District Court for the Western District of Washington (Case No. C06-5502) against GHCH, the hospital's medical staff, the hospital's governing board, and a number of physicians. The lawsuit alleged violations of Dr. Johnson's civil rights, including racial discrimination, and intentional and negligent infliction of emotional distress. On May 19, 2008, The Honorable Benjamin Settle granted summary judgment in favor of GHCH.

B. Information from Aberdeen Physicians About Dr. Johnson's Medical Practices

1. CW-5: Aberdeen Physician

68. CW-5 has been a surgeon for approximately eight years in Aberdeen, Washington. CW-5 met Dr. Johnson while working at Gray's Harbor Community Hospital. CW-5 states that Dr. Johnson has demonstrated poor judgment, including by not helping any of his patients get off of pain medication. CW-5 said that Dr. Johnson is "the habit that patients need to shake."

69. CW-5 treated a patient of Dr. Johnson in the emergency room after the patient had tried to commit suicide by taking a large quantity of OxyContin. The patient had reported that he/she had received 80mg 100 count OxyContin from Dr. Johnson's office without being seen by Dr. Johnson. I checked with the Gray's Harbor Drug Task Force and they confirmed that this patient was a well known drug user.

70. CW-5 stated that CW-5 would treat patients with abscesses (a common side effect of IV-drug abuse), but that, unlike Dr. Johnson, CW-5 is cautious about prescribing narcotics. CW-5 knows that prescription narcotics are often sold on the street by those obtaining them by prescription. CW-5 said that doctors who routinely fill narcotic prescriptions in large quantities are only serving the addiction. It is a parasitic relationship because it is a source of income for both the doctor and for patients who sell some of the drugs on the side.

71. CW-5 has heard from doctors working in the Emergency Room that many of the patients who came in as overdose patients have received prescription narcotics from Dr. Johnson.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

2. CW-6: Aberdeen Physician

72. CW-6 has been a physician in Aberdeen since 1983. CW-6 stated that Dr. Johnson prescribed an inordinate amount of pain medication. CW-6 described Dr. Johnson as a "writer," i.e., someone from whom it is easy to get opioids. CW-6 stated that he/she had four or five conversations with local pharmacists about Dr. Johnson's high rate of narcotic prescriptions. CW-6 informed me that Dr. Johnson did not display the level of responsibility expected of someone in his profession.

73. Dr. Johnson's ex-wife told CW-6 that Dr. Johnson's goal was to be retired by the age of 40, and that his mother instructs him on how many patients he has to see.

3. CW-7: Aberdeen physician

74. CW-7 has worked as a physician in the Emergency Room at Gray's Harbor Community Hospital for more than 15 years. CW-7 first met Dr. Johnson when CW-7 started treating some of Dr. Johnson's patients in the emergency room. CW-7 has observed that many of Dr. Johnson's patients CW-7 has seen in the emergency room have had an unusual amount of narcotics prescribed to them. Some of these patients came to the emergency room only because they had run out of their prescription, had trouble with their insurance at Dr. Johnson's clinic, or did not have cash to pay for their prescription.

75. CW-7 stated that addicts in the Aberdeen area know that Dr. Johnson's clinic is the place to go for narcotics prescriptions. CW-7 believes that Dr. Johnson has shown a repeated, inappropriate and harmful use of the prescription pad, prescribing without the restraint that should go with the privilege of being a doctor.

76. CW-7 observed that two of Dr. Johnson's patients had been admitted to the emergency room within a 4 to 6 week period. One of the patients CW-7 treated explained that he/she had been clean for some time but that he/she went to see Dr. Johnson and again became addicted to narcotics. CW-7 believes that Dr. Johnson preys on the vulnerability of certain patients to addiction and relapse to addiction. CW-7 stated that CW-7 views Dr. Johnson as a dangerous physician. Several of the physicians who were concerned about Dr. Johnson's dangerous prescribing practices made a complaint to the Department of Health.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

4. **CW-8: Aberdeen Physician**

77. CW-8 has been a surgeon at Gray's Harbor Community Hospital for approximately 12 years. Patients of Dr. Johnson told CW-8 that they were trying to get off narcotics but it was difficult because they could obtain narcotics from Dr. Johnson so easily. Some patients told CW-8 that if you waited long enough at the clinic, you will get a prescription of narcotics. CW-8 stated that Dr. Johnson is referred to as the "Candy Man" by other physicians because he prescribes narcotics so freely.

78. CW-8 treated a patient of Dr. Johnson's who suffered from a hand injury. The patient told CW-8 that he was not taking the medication prescribed by Dr. Johnson but was selling the pills in order to pay his rent. CW-8 said he/she treated patients of Dr. Johnson who had carpal tunnel syndrome and were on a variety of medications including Vicodin and muscle relaxers. CW-8 said he/she would not expect these types of patients to be on any pain medication. Dr. Johnson prescribes more narcotics than is medically necessary. CW-8 believed that it was unlikely that any doctor would consider Dr. Johnson's prescribing habits to be reasonable.

5. **CW-9: Aberdeen Physician**

79. CW-9 has worked in the emergency department at Gray's Harbor Community Hospital since April of 2001. CW-9 stated he/she saw more and more of Dr. Johnson's patients in the Emergency Room who were under heavy medication. One patient said he had to stay away from Dr. Johnson's clinic to overcome his dependency on narcotics. The patient explained that when he was at the clinic Dr. Johnson wrote a prescription for pain medication without examining the site of his injury.

80. Some patients told CW-9 that Dr. Johnson did not want to see them for medical problems, but rather only for refills. CW-9 said that Dr. Johnson's over-prescribing of narcotics was reported to the hospital and the state. According to CW-9, it seemed that after this, Dr. Johnson began to cut people off of narcotics but then noticed that he was back to his usual habits. CW-9 believes that Dr. Johnson is creating addicts and has the potential to kill someone by his prescription habits.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

81. CW-9 recalled a patient of Dr. Johnson who was in the emergency room because he overdosed on OxyContin. The patient was most concerned about how soon he would be released because he had to go to Dr. Johnson's clinic for a refill before the clinic closed.

82. CW-9 stated that there are hundreds of people in Aberdeen who are being over-medicated by Dr. Johnson and that hundreds of lives are being ruined.

6. CW-10: Aberdeen Physician

83. CW-10, a physician, has worked at the Gray's Harbor Community Hospital for about 12 years. CW-10 treated a former patient of Dr. Johnson for a narcotics overdose. The patient told CW-10 that he/she did not want to see Dr. Johnson any longer and asked him how he/she could overcome her addiction.

84. CW-10 has seen a lot of Dr. Johnson's patients in the emergency room at Gray's Harbor Community Hospital for overdoses. The patients were often on an unusual combination of narcotics and muscle relaxers prescribed by Dr. Johnson. Many of Dr. Johnson's patients told CW-10 that they never saw Dr. Johnson, but only saw a mid-level provider at his clinic, such as a nurse practitioner. Patients told CW-10 that they paid $65.00 for a prescription even though they were not seen by Dr. Johnson.

85. One Sunday, CW-10 drove by Dr. Johnson's clinic, and saw about thirty cars and people mulling outside of the clinic. According to CW-10, Dr. Johnson had a reputation of being a "writer," i.e., someone who is willing to write prescriptions for narcotics regardless of whether the medication is medically necessary. CW-10 said that Dr. Johnson's prescription habits are totally irresponsible.

XIII. DEPARTMENT OF HEALTH INVESTIGATION

86. I have confirmed that the Department of Health has received numerous complaints about Dr. Johnson, and is currently working with the Washington Attorney General's Office to bring charges against Dr. Johnson on 8 separate complaints. The Department of Health has informed me that Dr. Johnson is aware of the complaints and the ongoing Department of Health investigation.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

XIV. INFORMATION FROM FORMER CO-WORKER AT MONTESANO HEALTH AND REHAB

87. I interviewed a former administrator at the Montesano Health and Rehab Center, who shall be referred to as CW-4. CW-4 worked at the facility in 2003 and 2004 when Dr. Johnson was employed as the facility's Medical Director. CW-4 and other employees had numerous concerns about Dr. Johnson's behavior as Medical Director.

88. A principal concern of the co-worker was that it appeared that Dr. Johnson wrote chart notes for patients the he did not actually see. The co-worker was concerned that Dr. Johnson's notes indicated that he had seen 20 to 30 patients per day, a number that seemed high based on the observations of people who worked at the facility. When confronted about this issue, Dr. Johnson said he saw many patients in the evening, when there were fewer staff at the facility.

89. The co-worker also noted that the nature of some of Dr. Johnson's chart notes raised strong suspicions that he had not seen the patients. For example, he would sometimes refer to female patients in his notes as though the patients were male, and vice versa. He wrote chart notes for supposed visits with patients who had died prior to the date indicated as the date of the visit. CW-4 recalled that in at least one of the records for a deceased resident, Dr. Johnson wrote: "looked great, no change." When confronted with a situation in which he had written a note for a deceased patient, Dr. Johnson said "Oh my goodness, sorry. It's just a mistake."

XV. UNDERCOVER OPERATIONS

90. During the course of the investigation of Dr. Johnson's practice, two federal agents separately visited various clinics of Dr. Johnson's in an undercover capacity. Undercover Agent (UCA) UCA-1 presented himself as a Medicaid patient in several undercover operations in two of the four clinics owned by Dr. Antoine Johnson. The UCA-1 reported that during his visits to Dr. Johnson's clinics, he did not always see Dr. Johnson, sometimes seeing a nursing assistant and/or an ARNP. During all of the visits, the encounters with the providers were brief, and no one performed a physical examination. At each visit, UCA-1 received prescriptions for medication, including Tylenol #3, a Schedule III drug, and Ultram ER 200mg, a non-narcotic.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

Dr. Johnson's clinics billed 4 of the office visits as Level 4 (i.e., one as CPT code 99204, and 3 as CPT code 99214) and 2 as Level 3 (i.e., CPT 99213).

91. UCA-2 is a federal agent who presented himself as a Medicaid beneficiary on one occasion at the clinic owned by Dr. Johnson in Olympia, Washington. UCA-2 was seen by a nursing assistant and a physician's assistant, and the visit did include a physical examination. The UCA-2 believes that this claim was properly coded as a Level 4.

92. The descriptions of each of the visits set forth below is based on information provided to me by the undercover agents shortly after each of the visits described, and review of the video and audio tapes recorded during the visits. The billing information relating to each visit is based on information I obtained by DSHS.

A. UCA-1 Visits to Dr. Johnson's Clinics

93. UCA-1 visited Dr. Johnson's clinic at 104 W. 4th Street, Suite 105, Aberdeen, Washington 98520 on one occasion, and Dr. Johnson's clinic at 8509 Steilacoom Blvd. SW, Suite B, Lakewood, WA 98498 on multiple occasions. On each of these visits, UCA-1 presented himself as Robert Larsen, his undercover identity.

1. First visit: 1/15/2008 in Aberdeen, Washington

94. UCA-1 signed in as Medicaid beneficiary Robert Larsen and gave the receptionist a Medicaid coupon. He filled out new patient forms that included questions about his medical history and insurance. He sat in the waiting area for about 1 hour and 45 minutes. During this time, UCA-1 observed 5 patients being taken back, one by one, by a nursing assistant, each reappearing after about 5 minutes. The nursing assistant then told them to wait a few minutes for their prescription. After a few minutes, the nursing assistant returned to the reception area and gave the patient a prescription.

95. After he had been in the reception area for about 1 hour and 45 minutes, a female nursing assistant, "Lisa" (last name unknown), took him to the exam area, weighed him, and took his blood pressure by use of a small device placed around his wrist. Lisa then took UCA-1 to an adjoining exam room, and closed the door. While he was waiting, UCA-1 heard a male voice (that he later identified as Dr. Johnson) tell Lisa to be careful about patients walking into

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

the clinic and "bird-dogging;" that he was "not going to go to jail over this;" and that she should schedule these patients for Sunday rather than take them as walk-ins. Based on my experience and research, the term bird-dogging means to follow closely or monitor someone.

96. After UCA-1 waited in the exam room for about 25 minutes, Dr. Johnson came in. UCA-1 and Dr. Johnson sat together in front of the computer. Dr. Johnson asked the UCA-1 questions regarding his medical history and why he was there to see him. UCA-1 said he sometimes had sciatica pain, and occasional indigestion. He observed Dr. Johnson write "sciatica" and "GERD" in the diagnosis field into the computer record. Dr. Johnson noted that UCA-1's blood pressure was high, based on the blood pressure recording made by the nursing assistant of approximately 140/90, although Dr. Johnson did not recheck his blood pressure (UCA-1 has advised me that he does not have a history of high blood pressure and that his blood pressure is plus or minus 120/70 when recorded by his own health providers). Dr. Johnson then proceeded to prescribe Ultram ER (a non-narcotic pain reliever), as well as Feldene (an anti-inflammatory drug), Nexium (for gastric reflux) and samples of blood pressure medications. The visit was approximately 16 minutes long. Dr. Johnson did not conduct a physical exam.

97. Dr. Johnson noted that UCA-1 had listed his address as being in Federal Way, and Johnson noted that he did not have hospital privileges in King County. Dr. Johnson said that his peers might think it was far-fetched if he had patients coming from Federal Way to Aberdeen. Dr. Johnson suggested that if UCA-1 had an address in Pierce County, he could go to Dr. Johnson's Lakewood or Tacoma Clinic.

98. This visit was billed as CPT code 99204. I contacted the Medical Audit Unit of DSHS and advised them what occurred during this office visit. I was told that the service was billed at a higher level than was appropriate.

2. **Second visit: 2/26/2008 in Lakewood, Washington**

99. UCA-1 visited Dr. Johnson's clinic in Lakewood, Washington for a scheduled 7:30 p.m. appointment. However, because he did not have his Social Security number with him, he was told he could not be seen that day, and was rescheduled for another day. No claim was submitted for this date.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

3. Third visit: 3/4/2008 in Lakewood, Washington

100. UCA-1 arrived at the clinic at about 6:20 p.m. for a scheduled 7:30 p.m. appointment. He observed a black female approximately 45 years old, another black female identified as "Sam" (last name unknown), and a nursing assistant identified as "Eloisa" (last name unknown) behind the counter. UCA-1 also observed approximately 25 other patients in the waiting area. UCA-1 signed in and presented his Medicaid coupon to Sam. Eloisa escorted him to an exam room and took his weight and blood pressure, noting that his blood pressure was normal. Eloisa asked him to write his Social Security number in the medical record in his own handwriting. UCA-1 wrote his undercover Social Security number in the medical record and returned to the waiting area.

101. UCA-1 waited for approximately 90 minutes before Dr. Johnson arrived at the clinic. During that time, UCA-1 noticed an unidentified female patient walk into the clinic, and pay $75.00 cash. The patient then told the UCA-1 that during her last visit at the clinic, there were approximately 51 patients in the waiting room. He/she said: "take 51 patients times $75.00 and now you know why Dr. Johnson drives a Mercedes." During the wait, UCA-1 noticed that approximately 25 patients signed in. He observed that approximately 20 of them paid $75.00 cash, and 5 used what appeared to be a Medicaid coupon.

102. At approximately 8:25 p.m., Eloisa called UCA-1's name and escorted him to an exam room. After waiting there for about 15 minutes, Dr. Johnson entered the room. Dr. Johnson entered information into the computer medical record, at one point commenting that the blood pressure medication seemed to be working, and that UCA-1 should continue taking it. In response to Dr. Johnson's question regarding what brought him to the office, UCA-1 said that his sciatica was bothering him. UCA-1 said it would be easier to show Dr. Johnson than to tell him, but Dr. Johnson remained at the computer, and did not examine or look at UCA-1. Dr. Johnson verbally stated "sciatica," "order X-Ray" and "Physical Therapy" and appeared to type that information into the computer. He also said "Tylenol 3 for pain" after UCA-1 said that medication had worked for him in the past.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

103. Dr. Johnson informed UCA-1 that he would receive more drug samples for his blood pressure, advised him to schedule an X-ray, blood work, and said that his prescription refill would be at the front desk. The visit with Dr. Johnson lasted approximately 10 minutes, during which time Dr. Johnson remained seated and typing. UCA-1 received the following prescriptions: Feldene (an anti-inflammatory drug), Nexium (for gastric reflux),Tyleonol #3 (a Scheduled III drug), Colace (stool softener). He was also given samples of blood pressure medication at the front desk.

104. This visit was billed as CPT code 99214. I contacted the Medical Audit Unit of DSHS and advised them what occurred during this office visit. I was told that the service was billed at a higher level than was appropriate.

4. **Fourth visit: 4/03/2008 in Lakewood, Washington**

105. UCA-1 arrived at the Lakewood clinic at about 7:00 p.m. for a scheduled 7:45 p.m. appointment. Prior to entering the clinic, UCA-1 overheard an unknown male say "Hey did you get a script dog?" and another unknown male say "No, he is not here yet." The UCA-1 observed approximately 40 patients in the waiting room and approximately 50 to 60 people waiting outside of the clinic. UCA-1 overheard a female talking on her cell phone, saying the following: "He's not there yet, he's running late. As soon as he gets here, I will get it and I'll call you and we'll hook up. I got a hold of my people." UCA-1 also overheard other patients refer to Dr. Johnson as the "script doc," and several patients saying "just give me my scripts so I can go."

106. While waiting to be called to the exam room, UCA-1 observed patients being called back by a nursing assistant, and then reappearing in the lobby area in 2 to 3 minutes. Shortly after 8:05 p.m., UCA-1 heard patients say that Dr. Johnson had arrived, and they were handing out scripts. Soon after that, a nursing assistant came into the reception area from the back, carrying an inch-high pile of papers that appeared to be prescriptions, and called out patient names. Over the next five minutes, most of the room had cleared out as patients took their prescriptions and left.

107. At about 8:25 p.m., UCA-1 was called back by a nurse practitioner identified as "Amanda" (last name unknown), who took his blood pressure and weight, and escorted him to an

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

exam room. Amanda asked him if he was waiting to see Dr. Johnson, or whether he just needed refills. UCA-1 said he did not need to see Dr. Johnson, and did not need refills. Amanda, while sitting at the computer, discussed his prior visit, medications, active problems and history. UCA-1 spent about 8 minutes with Amanda. He/she then told him to go to the reception area and wait to receive his samples for blood pressure medication and prescriptions for Feldene (an anti-inflammatory drug), Nexium (for gastric reflux), Tylenol #3 (a Schedule III drug) and samples of blood pressure medication.

108. This visit was billed as CPT 99214. I contacted the Medical Audit Unit of DSHS and advised them what occurred during this office visit. I was told that the service was billed at a higher level than was appropriate.

5. **Cancelled appointment 5/15/2008**

109. One week prior to an appointment scheduled for 05/15/2008, UCA-1 called the clinic to re-schedule. The appointment change was granted to 05/22/2008. Although UCA-1 had no visit on 5/15/2008, Dr. Johnson's office billed Medicaid for CPT Code 99213 for date of service 5/15/2008. I contacted the Medical Audit Unit of DSHS and advised them what occurred during this office visit. I was told that since there was no service provided, it should not have been billed.

6. **Fifth visit: 5/22/2008 in Lakewood, Washington**

110. UCA-1 arrived at the clinic about 6:05 p.m. for a 6:15 p.m. appointment. UCA-1 observed about 10 patients in the waiting area, and about 10 patients waiting outside the clinic. He saw several patients pay $75.00 in cash at the counter, and receive a receipt. UCA-1 filled out a "half-slip," reporting that the reason for his visit was prescription refills. UCA-1 overheard another patient state that the reason for the visit was to obtain refills.

111. After a brief wait, a receptionist identified as "Sedera" (last name unknown), called UCA-1 to the front desk. Sedera advised him that Dr. Johnson was not at the clinic, and that he would have to come back the next day. UCA-1 told Sedera that all he needed was prescription refills. Sedera replied that was fine, and took his Medicaid coupon and copied it. After another 10 minute wait, UCA-1 was called back by a male assistant, who weighed him and

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

took his blood pressure. This nursing assistant confirmed that he was there for prescription refills. The nursing assistant typed a few lines into the electronic medical record and told UCA-1 to stop by the front desk to pick up his prescriptions. The nursing assistant also told him he needed to submit to a random urinalysis test. UCA-1 complied. The entire encounter with the assistant lasted about 3 minutes. He was given prescriptions for Feldene (an anti-inflammatory drug), Nexium (for gastric reflux),Tyleonol #3 (as Scheduled III drug), Colace (stool softener). He was also given samples of blood pressure medication at the front desk.

112. This visit was billed as CPT 99213. I contacted the Medical Audit Unit of DSHS and advised them what occurred during this office visit. I was told that the service was billed at a higher level than was appropriate.

7. **Sixth visit: 6/26/2008 in Lakewood, Washington**

113. UCA-1 arrived at the Lakewood clinic at about 5:14 p.m. for a 5:45 p.m. scheduled appointment. He filled out a "half-slip" form indicating the reason for his visit was "prescription refill." While waiting, UCA-1 observed about 15 patients in the waiting area, and about another 15 patients standing outside the clinic. UCA-1 observed two patients give Sedera cash and receive receipts.

114. After about 20 minutes, Sedera called UCA-1 to the front desk, where he/she asked him for his Medicaid coupon, which he/she copied and returned. UCA-1 returned to the waiting area, where he overheard a conversation between three patients discussing another patient by the name of "Amber" (last name unknown). They expressed concern that Amber had been asking too many questions regarding what medications they were getting from Dr. Johnson, what they had told Dr. Johnson their issues were, and other questions relating to their relationship with Dr. Johnson. The three patients discussed that they thought Amber might be "Five-O." I know the term "Five-O" to be street slang for Law Enforcement.

115. At about 6:05 p.m., UCA-1 was escorted to an exam room by a nursing assistant. At about 6:15 p.m., Dr. Johnson entered the exam room. Dr. Johnson said he was filling out a template form and asked UCA-1 his date of birth. Dr. Johnson took his blood pressure, temperature, and weight and entered information into the computer. Dr. Johnson suggested that

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

he would refer UCA-1 for blood work to test for cholesterol levels and to rule out diabetes. Dr. Johnson also suggested that UCA-1 would soon need a colonoscopy, noting that UCA-1 was approaching 40 years of age. UCA-1 was then instructed to pick up his samples and prescription refills at the front desk. The visit lasted about 8 minutes. Dr. Johnson did not perform an examination. UCA-1 picked up prescriptions for Feldene (an anti-inflammatory drug), Nexium (for gastric reflux),Tylenol #3 (a Schedule III drug) and Colace (stool softener) and samples of blood pressure medication.

116. This visit was billed as CPT code 99214. I contacted the Medical Audit Unit of DSHS and advised them what occurred during this office visit. I was told that the service was billed at a higher level than was appropriate.

8. **Seventh visit: 7/31/2008 in Lakewood, Washington**

117. When UCA-1 arrived at the Lakewood clinic at about 5:30 p.m., the clinic was not yet opened. He observed about 15 patients waiting outside. When he entered the clinic, UCA-1 informed Sedera that he had not received his Medicaid coupon in the mail and asked if he could pay cash. Sedera consulted with Lawanda Johnson, who UCA-1 knew to be Dr. Johnson's mother. When Lawanda Johnson asked his name, UCA-1 said it was Robert Larsen (his undercover name). Lawanda Johnson looked that name up on the DSHS website, and asked UCA-1 for his date of birth and Social Security number. UCA-1 gave her his undercover date of birth and Social Security number. Lawanda said that Robert Larsen was no longer active with Medicaid. UCA-1 asked to pay cash, and was advised that the price had recently gone up from $75 to $100. He paid $75, which is all he said he had on him, and they agreed he could owe the rest.

118 . At about 7:35 p.m., nurse practitioner Amanda took his weight, and escorted him to an exam room. UCA-1 confirmed that he was there for refills. Amanda took his blood pressure. He/she asked him to confirm that his pain was still in the sciatica, and asked him to describe his pain over the past few months on a scale of 1-10. UCA-1 replied "5. " Amanda gave him samples of blood pressure medication and prescriptions for Feldene (anti-inflammatory),

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

Nexium (for gastric reflux), Tylenol #3 (a Schedule III drug), Colace (a stool softener) and blood pressure medication.

119. The following day I contacted an audit supervisor at DSHS to verify that UCA-1 under the name Robert Larsen was still listed in the DSHS database as an active Medicaid beneficiary. The audit supervisor confirmed that the UCA-1 identity "Robert Larsen" was still listed as an active Medicaid beneficiary. Washington Administrative Code (WAC) Section 388-502-0160 provides that a provider may not accept any form of payment directly from the beneficiary for a covered service, if that person is an active Medicaid beneficiary.

120. No claim was submitted to the Medicaid program for this date.

B. UCA-2's Visit to Olympia Clinic

121. Acting in an undercover capacity, UCA-2 visited the Johnson Family Practice, located in Olympia, Washington on April 23, 2008, pretending to be a Medicaid beneficiary. As UCA-2 entered the clinic, he observed a paper sign on the receptionist's glass window that read "This Is a Non-Narcotic Clinic." UCA-2 was asked to fill out new patient forms.

1242 In the exam room, UCA-2 was met by "Garrett," a nursing assistant. UCA-2 told Garrett that he was new to the area, and was looking for a new doctor. He also said that he had back pain. Garrett took a detailed medical history, took his blood pressure and weight, and recorded his height as recited by UCA-2. The nursing assistant also examined UCA-2's ears.

123. Next, UCA-2 met with William "Scotty" Millar, PA, a male in his early seventies, who informed UCA-2 that he was Dr. Johnson's assistant. Millar said that he ran the clinic at that location. Millar performed an examination, listening to UCA-2's heart, lungs, neck and back. Then he examined UCA-2's ears with an instrument, palpated his stomach area, and checked his hands and arms. UCA-2 had informed Millar of mild back pain, to which Millar stated that he would rather prescribe non-narcotics. Millar provided UCA-2 a prescription for a muscle relaxer, with instructions.

124. The UCA-2's visit on 04-23-2008 was billed as 99204. I contacted the Medical Audit Unit of DSHS and advised them what occurred during this office visit. I was told that the service provided was billed appropriately.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

XVI. DR. JOHNSON'S PRESENCE AT TACOMA AND OLYMPIA PRACTICES

125. Information I obtained throughout the investigation indicates that Dr. Johnson treats patients at the Johnson Family Practice clinics in Tacoma and Olympia, as well as at the Aberdeen and Lakewood Clinics. This information includes reports of physical surveillance conducted by agents working on the investigation with me.

126. An FBI agent working on the investigation conducted a physical surveillance of the clinic in Olympia, Washington on October 29, 2008 from approximately 5:30 p.m. to 7:30 p.m. At the beginning of the surveillance, numerous people were observed to be in the clinic and waiting outside the clinic. Dr. Johnson arrived at the clinic by car at approximately 6:00 p.m. and entered the clinic. His car was still in the parking lot when the surveillance was discontinued at 7:30 p.m.

127. An HHS/OIG agent working on the investigation conducted a physical surveillance of the Johnson Family Practice clinic in Tacoma on December 31, 2008. Dr. Johnson was observed in his vehicle on 13th Street near the corner of 13th and Martin Luther King Jr. Way, on the side of the Johnson Family Practice clinic in Tacoma during the surveillance. All of the parking spaces in front of the clinic were occupied.

128. As noted above, UCA-1 was advised by Dr. Johnson that instead of seeing him at the clinic in Aberdeen, UCA-1 could go to the Tacoma Clinic or the Lakewood Clinic.

129. I have learned from DSHS and Medicare that all of the claims submitted for the Broadway Clinic and the Johnson Family Practices are submitted under Dr. Johnson's provider number.

XVII. DR. JOHNSON'S APPROVAL FOR TREATMENT OF OPIOID DEPENDENCE

130. I have learned from the DEA that Dr. Johnson has been qualified to provide buprenorphine treatment for opioid dependence for up to 100 patients. The two forms of buprenorphine approved by the Food and Drug Administration (FDA) are Suboxone and Subutex. These are Schedule III drugs. I do not have information that is sufficient for me to know whether Dr. Johnson's patient records regarding buprenorphine treatment for opioid dependence are maintained in such a manner so that those patient files are distinguishable on

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

their face from patient files of patients who are not receiving buprenorphine treatment for opioid dependence.

XVIII. REVIEW OF TAX RETURNS

131. I have reviewed tax records for The Broadway Clinic (in Abderdeen, WA) and personal tax records for Dr. Johnson, which were included in discovery in the GHCH federal lawsuit. Documents filed with the State of Washington list Dr. Johnson as the president of the Broadway Clinic, and his mother, Lawanda Johnson, is listed as the vice-president" of the business.

132. Tax records show a disparity between the gross revenues and profits reported by the Broadway Clinic in Aberdeen, and Dr. Johnson's personal income, as reported to the Internal Revenue Service. They also reveal a steady and significant rise in profits for this particular clinic for the five-year period between 2002 and 2006.

133. Tax records of The Broadway Clinic show the following gross receipts and profits:

Year	Gross Receipts	Gross Profits
2002	$25,342.57	$25,342.57
2003	$301,973	$213,045
2004	$480,936	$464,813
2005	$846,541	$775,292
2006	$1,021,664	$1,018,909

134. Notwithstanding the profits noted above, Dr. Johnson's personal tax returns show that he reported zero taxable income in 2004, and an adjusted gross income of *minus* $21,769.00 for 2005. I have not reviewed tax records for the years 2002, 2003, or 2006.

XIX. REPORT OF RECORDS AT LAWANDA JOHNSON'S RESIDENCE

135. The DSHS auditor told me that while he/she was conducting the audit described above for the Medicaid Program, Lawanda Johnson told her that some patient records are kept at her residence located at 1252 N. Broadway Street, Aberdeen, WA 98520, due to lack of storage space at the clinic.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

XX. *PROBABLE CAUSE THAT EVIDENCE OF VIOLATIONS WILL BE FOUND AT LOCATIONS 1, 2, 3, 4 AND 5*

136. Based on the evidence set forth above, I believe that there is substantial evidence that Dr. Johnson has committed health care fraud by submitting claims for services at a higher level than justified and for services not rendered.

137. Based on the evidence set forth above, I believe that Dr. Johnson and other personnel at his clinics see substantial numbers of persons who are drug seekers and that he is using their addiction as a way to make money. As described in this Affidavit, Dr. Johnson is acting outside the course of his professional practice by distributing controlled substances without a legitimate medical purpose. Such prescription practices constitute violations of 21 U.S.C. 841(a)(1), Illegal Distribution of Controlled Substances.

138. Based on my training and experience I believe that Dr. Johnson's prescribing practices present a danger to the public interest, especially to patients who rely on his medical expertise. As a result of conversations with former colleagues of Dr. Johnson in the Aberdeen area and reviews of patient profiles, I believe that it is in Dr. Johnson's patients' interests for HHS/OIG to review all of Dr. Johnson's patient records.

139. Based upon my review of the tax returns as described above, I believe that there is cause to believe that Dr. Johnson has committed tax fraud by submitting claims that underestimate income and/or overestimate deductible expenses.

140. Based upon my training and experience, I know that physicians commonly maintain the following records and items at their medical practice: the charts of current and former patients, appointment books, sign in sheets, receipt books, billing manuals and instructions, billing records, and financial records. I also know that the DEA requires physicians to maintain log books regarding the dispensing of samples.

141. Based on the foregoing, I believe that maintained at the offices of Dr. Antoine Johnson, i.e., Locations 1, 2, 3 and 4 described above, are records which constitute evidence of the aforementioned crimes, and therefore a search warrant should be issued authorizing the

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

seizure of evidence as particularly set forth in Attachment B-1 for locations 1, 2, 3 and 4 described above.

142. Based on the foregoing, I believe that probable cause exists to believe that patient records are maintained at the home of Lawanda Johnson, i.e., Location 5 described above, and such patient records constitute evidence of the aforementioned crimes, and therefore a search warrant should be issued authorizing the seizure of evidence as particularly set forth in Attachment B-2.

XXI. REQUEST TO SEARCH COMPUTERS

143. Based on information from former patients and the undercover operations, Dr. Johnson maintains at least some patient files in computer files. Furthermore, from my training and experience and discussions with other agents, I know that it is common for persons involved in medical practice to use computers and other electronic storage media to store medical, business and financial records. It is my belief that any number of the items sought in this affidavit may be found stored electronically. Based on my experience and my consultation with Mario Marez, Computer Forensic Examiner with HHS/OIG, who has approximately 6 years of specialized training and experience in searching for electronic evidence, I also know that electronic evidence can be moved easily from one computer or electronic storage medium to another. As a result, I believe that electronic evidence may be stored on any computer or electronic storage medium present at the search sites.

144. In addition, based on my training and experience and that of Mario Marez, I know that in most cases it is impossible to successfully conduct a complete, accurate, and reliable search for electronic evidence stored on a computer or other electronic storage media during the physical search of a search site. This is true for a number of reasons, including but not limited to the following:

A. Technical Requirements: Searching computers and other electronic storage media for criminal evidence is a highly technical process requiring specific expertise and a properly controlled environment. The vast array of computer hardware and software available requires even computer experts to specialize in particular systems and applications, so it is difficult to

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

know before a search which expert is qualified to analyze the particular system(s) and electronic evidence found at a search site. As a result, it is impossible to bring to the search site all of the necessary personnel, technical manuals, and specialized equipment to conduct a thorough search of every possible computer system. In addition, electronic evidence search protocols are exacting scientific procedures designed to protect the integrity of the evidence and to recover even hidden, erased, compressed, password-protected, or encrypted files. Since computer evidence is extremely vulnerable to inadvertent or intentional modification or destruction (both from external sources or from destructive code embedded in the system such as a "booby trap"), a controlled environment is essential to ensure its complete and accurate analysis.

B. Volume of Evidence: The volume of data stored on many computers and other electronic storage media is typically so large that it is impossible to search for criminal evidence in a reasonable period of time during the execution of the physical search of a search site. A single megabyte of storage space is the equivalent of 500 double-spaced pages of text. A single gigabyte of storage space, or 1,000 megabytes, is the equivalent of 500,000 double-spaced pages of text. A fifteen gigabyte storage device would, therefore, contain the equivalent of 7.5 million pages of data, which, if printed out, would completely fill a 10' x 12' x 10' room to the ceiling. Computer hard drive capacities of hundreds of gigabytes are now commonplace. Consequently, the volume of data within a typical non-networked computer system is equivalent to many millions, and possibly billions, of printed pages.

C. Hidden or Obfuscated Evidence: Computer users can conceal data within computers and electronic storage media through a number of methods, including the use of innocuous or misleading filenames and extensions. For example, files with the extension ".jpg" often are image files; however, a user can easily change the extension to ".txt" to conceal the image and make it appear as though the file contains text. Similarly, computer users can encode communications to avoid using key words that would be consistent with the criminal activity. Computer users can also attempt to conceal electronic evidence by using encryption technologies. For example, some encryption systems require that a password or device, such as a "dongle" or "keycard," be used to obtain a readable form of the data. In addition, computer users can conceal

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

electronic evidence within another seemingly unrelated and innocuous file using a process known as "steganography." For example, by using steganography, a computer user can conceal text in an image file in such a way that it cannot be read when the image file is opened using ordinary means. As a result, law enforcement personnel may have to search all the stored data to determine which particular files contain items that may be seized pursuant to the warrant. This sorting process can take a substantial amount of time, depending on the volume of data stored and other factors.

D. Deleted or Downloaded Files: Computers and other electronic storage media allow suspects to delete files to attempt to evade detection or to take other steps designed to frustrate law enforcement searches for information. However, searching authorities can recover computer files or remnants of such files months or even years after they have been downloaded onto a hard drive, deleted, or viewed via the Internet. When a person "deletes" a file on a home computer, the data contained in the file do not actually disappear; rather, the data remain on the hard drive until they are overwritten by new data. As a result, deleted files, or remnants of deleted files, may reside in free or "slack" space (i.e., in space on the hard drive that is not allocated to an active file or that is unused after a file has been allocated to a set block of storage space) for long periods of time before they are overwritten. A computer's operating system may also keep a record of deleted data in a "swap" or "recovery" file. Similarly, files that have been viewed via the Internet are automatically downloaded into a temporary Internet directory or "cache." The browser typically maintains a fixed amount of hard drive space devoted to these files, and the files are only overwritten as they are replaced with more recently viewed Internet pages. Thus, the ability to retrieve the residue of an electronic file from a hard drive depends less on when the file was downloaded or viewed than on a particular user's operating system, storage capacity, and computer habits.

145. Search Techniques. Because of the above-described technical requirements, volume of evidence, and the ability of suspects to delete, download, hide and/or obfuscate evidence, the analysis of electronically stored data may necessitate any or all of several different computer forensics techniques. Such techniques may include, but are not limited to, surveying

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

various file "directories" and the individual files they contain (analogous to looking at the outside of a file cabinet for the pertinent files in order to locate the evidence and instrumentalities authorized for seizure by the warrant); "opening" or reading the first few "pages" of such files in order to determine their precise contents; "scanning" storage areas to discover and possibly recover recently deleted data; scanning storage areas for deliberately hidden files; and performing electronic "keyword" searches through all electronic storage areas to determine whether occurrences of language contained in such storage areas exist that are related to the subject matter of the investigation.

146. In accordance with the information in this Affidavit, law enforcement personnel will execute the search of computer systems seized pursuant to this warrant as follows:

A. Upon securing the search site, law enforcement personnel trained in searching and seizing computer systems (hereinafter "computer personnel") will conduct an initial review of any computer systems to determine whether the data contained on these systems can be duplicated on site in a reasonable amount of time and without jeopardizing the ability to accurately preserve the data.

B. If based on their training and experience, and the resources available to them at the search site, the computer personnel determine it is not practical to make an on-site copy of the data within a reasonable amount of time and without jeopardizing the ability to accurately preserve the data, then the computer systems will be seized and transported to an appropriate law enforcement laboratory for review. The computer systems will be reviewed by appropriately trained personnel to extract and seize any data that falls within the list of items to be seized pursuant to the warrant.

C. In order to search fully for the items identified in the warrant, the computer personnel may examine all of the data contained in the computer systems to view their precise contents and determine whether the data fall within the list of items to be seized pursuant to the warrant. In addition, the computer personnel may search for and attempt to recover deleted, hidden, or encrypted data to determine whether the data fall within the list of items to be seized pursuant to the warrant.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

D. If searching authorities determine that none of the data contained on a computer system fall within any of the items to be seized pursuant to the warrant, law enforcement personnel will return the computer system within a reasonable period of time, unless further authorization is obtained from the Court.

E. In order to search for data that fall within the list of items to be seized pursuant to the warrant, law enforcement personnel will seize and search the following items (heretofore and hereinafter referred to as "computer systems"), subject to the procedures set forth above:

1. Any computer equipment and storage device capable of being used to commit, further, or store evidence of the offenses listed above;

2. Any computer equipment used to facilitate the transmission, creation, display, encoding or storage of data, including word processing equipment, modems, docking stations, monitors, printers, plotters, encryption devices, and optical scanners;

3. Any magnetic, electronic or optical storage device capable of storing data, such as floppy disks, hard disks, tapes, CD-ROMs, CD-R, CD-RWs, DVDs, optical disks, printer or memory buffers, smart cards, PC cards, memory calculators, electronic dialers, electronic notebooks, and personal digital assistants;

4. Any documentation, operating logs and reference manuals regarding the operation of the computer equipment, storage devices or software;

5. Any applications, utility programs, compilers, interpreters, and other software used to facilitate direct or indirect communication with the computer hardware, storage devices, or data to be searched;

6. Any physical keys, encryption devices, dongles and similar physical items that are necessary to gain access to the computer equipment, storage devices or data; and

7. Any passwords, password files, test keys, encryption codes or other information necessary to access the computer equipment, storage devices or data.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970

XXII. CONCLUSION

147. Based upon the foregoing facts, I believe that maintained at the premises to be searched are records which constitute evidence of the crimes discussed herein, and therefore search warrants should be issued authorizing the seizure of evidence as particularly set forth in Attachments B-1 and B-2.

RAUL PORTILLO
Special Agent
U.S. Department of Health and Human Services
Office of Inspector General

SUBSCRIBED and SWORN before me this 7 day of January, 2009.

THE HONORABLE J. KELLEY ARNOLD
United States Magistrate Judge

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
(206) 553-7970